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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 473

JOHN D. PENNEKAMP AND THE MIAMI HERALD PUBLISHING COMPANY, PETITIONERS,

vs.

THE STATE OF FLORIDA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR CERTIORARI FILED OCTOBER 1, 1945.

CERTIORARI GRANTED NOVEMBER 5, 1945.

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IN THE CIRCUIT COURT IN AND FOR THE COUNTY OF DADE, FLORIDA

CITATION FOR CONTEMPT—Filed November 10, 1944

Whereas, on November 2, 1944, the Circuit Court in and for Dade County, Florida, was not in vacation but was in session or in term time; and

Whereas, you, John D. Pennekamp, were on said date Associate Editor of the Miami Herald, a newspaper published in Miami, Dade County, Florida, within the territorial jurisdiction of the said Circuit Court; and

Whereas, there were pending in said Court on said date divers cases both at law and in equity involving many questions of law; and

Whereas, the Honorable George E. Holt, one of said Circuit Judges, was then temporarily absent; and

Whereas, the Miami Herald is a newspaper of large circulation and you, the said John D. Pennekamp as associate editor thereof did cause to be published in said Miami Herald a certain editorial together with a cartoon purporting to illustrate the said editorial according to its tenor and effect, which said editorial and cartoon are hereto attached and made a part hereof; and said editorial after very properly observing that the people's courts have been established to promote justice and that proper places have been provided for the court and further truthfully stating that:

> "Upon the judges the people must depend for the decision and the judicial conduct that will insure society—as a whole and in its individuals—against [fol. 4] those who would undermine or destroy the peace, the morality and the orderly living of the community."

and that:

> "• • • in order that the courts should not be amenable to political or other pressures in their determination of matters placed before them, Florida Circuit Judges are called upon to face the electorate less often than are other elective office holders."

and that the judges:

> "• • • are the first line of defense locally of organized society against vice, corruption and crime, and the sinister machinations of the underworld."

and thereupon in opposition and antithesis to the proper functions of this Court in the discharge of its duty as you so well recognize, said editorial did adversatively further state:

> "Every accused person has a right to his day in court. But when judicial instance and interpretative procedure recognize and accept, even go out to find, every possible technicality of the law to protect the defendant, to block, thwart, hinder, embar-ass and nullify prosecution, then the people's rights are jeopardized and the basic reason for courts stultified.
>
> [fol. 5] The seeming ease and pat facility with which the criminally-charged have been given technical safeguard have set people to wondering whether their courts are being subverted into refuges for lawbreakers."

whereby you did reflect upon and impugn the integrity of said Court and the Judges thereof in imputing that the Judges of said Court "do recognize and accept, even go out to find, every possible technicality of the law to protect the defendant, to block, 'hwart, hinder, embarrass and nullify prosecution," which said acts by you tend to create a distrust for said court and the judges thereof in the minds of the people of this county and state and tend to prevent and prejudice a fair and impartial action of the said Court and the Judges thereof in respect to the said pending case.

(A)

Rape Cases

Whereas on October 30, 1944, at the time set for the arraignment of eight defendants charged with rape in those cases numbered 847, 850, 855 and 856 then pending in said Court, a motion to quash was filed by defense counsel in case No. 856 and the legal representative of the office of the State Attorney (Asst. State Attorney Henry Jones then present in

court with Asst. State Attorney H. Frost Bailey—the State Attorney being then absent) then and there agreed in open court that said indictment No. 856 as well as the others were so defective as to make it advisable that the State not go to [fol. 6] trial upon said indictment and thereafter the Judge of said Court then sitting (Paul D. Barns) did sustain said motion in respect to case No. 856; and

Whereas, on October 31, 1944, after new indictments were returned against the same defendants and their cases promptly set for trial on specified days;

You, by said editorial and cartoon of November 2, 1944, have willfully or wantonly withheld the full truth from the public and have likewise failed to fairly report the action of the Court and Judge thereof in respect to said indictments by stating only that "Judge Paul D. Barns agreed with the defense that the indictments were not properly drawn" withholding the truth by failing to state the act of the representative of the State Attorney's office, and in connection therewith published said cartoon entitled, "But, Judge!" making more definite the false imputation implied by the editorial and not expressed in words to the effect that fair and impartial justice was not being done between the State of Florida (represented in said cartoon by the little character as "Public Interest" being neither heard, recognized nor favored) and the defendants (represented in said cartoon by the large character beside the judge and on the bench and being heard, recognized and favored).

(B)

Brook Club Case

Whereas there was and is now pending in the said Circuit Court since March 22, 1944, a chancery suit entitled, "State of Florida v. The Brook Club, Inc., et al., No. 84054, wherein [fol. 7] the answer to the bill of complaint was filed in due course on May 1, 1944 and

Whereas the Honorable Stanley Milledge, State Attorney, had allowed the time for taking testimony to expire (more than 90 days) without taking any action on or testimony on said bill of complaint after same came at issue; and

Whereas, after ample notice given to the State Attorney and acknowledged by him in writing, all as shown by the record of said cause, the case was set down for hearing for final decree in accordance with law; and

Whereas final decree of dismissal was entered in said cause on October 31, 1944, by Marshall C. Wiseheart, another Circuit Judge whose duty it was by reason of the absence of the said George E. Holt and in the exercise of sound discretion, to entertain said motion and to rule thereon according to the law of the State of Florida; and

Whereas, concerning said act by Judge Wiseheart, said editorial instead of fairly stating that said cause came on for hearing *after notice* (7 days) to the Honorable State Attorney, said editorial reads that "• • • the case appeared out of blue sky • • •" before Judge Wiseheart and said editorial comments that:

> "The judge dismissed the injunction against the club and its operators. The defense got delay when it wanted and prompt decision from the court when it profited it."

and in connection therewith published said cartoon entitled, "But, Judge!" making more definite the false imputations [fol. 8] implied by the editorial and not expressed in words to the effect that fair and impartial justice was not being done between the State of Florida (represented in said cartoon by the little character as "Public Interest" being neither heard, recognized nor favored) and the defendants (represented in said cartoon by the large character beside the judge and on the bench and being heard, recognized and favored).

Whereas you did thereafter on November 7, 1944, likewise cause to be published an editorial in said Miami Herald entitled "Why People Wonder" reading as follows:

> "Here is an example of why people wonder about the law's delay and obstructing technicalities operating to the disadvantage of the state—which is the people—in prosecutions. After stalling along for months, the defense in the padlock case against the Brook Club appeared before Judge Marshall C. Wiseheart for a decision. The State Attorney was working with the grand jury. The court knocked out the injunction. There was speed, dispatch, immediate attention and action for those charged with violation of the law. So fast that the people didn't get in a peep.
>
> That's one way of gumming up prosecution. Another is to delay action • • •"

with the effect of emphasizing the misleading and deceptive representations aforesaid, copy of which editorial is hereto attached and made a part hereof.

[fol. 9] (C)

Teepee Club Case

Whereas, at the time of said publication there was then and is now another pending suit brought in the name of the State of Florida by the Honorable Stanley Milledge, State Attorney, to abate a nuisance at a certain place known as the Teepee Club in said Dade County, said case being entitled, State of Florida v. Joseph W. Lipop, et al., No. 87365, and said editorial after reciting that same was an injunction suit to abate a nuisance (bookmaking) did mention the Judge's ruling in respect thereto and thereupon did specifically comment concerning it that:

> "This may be good law, exact judicial evaluation of the statutes. It is, however, the character of legal interpretation which causes people to raise questioning eyebrows and shake confused heads in futile wonderment."

and in connection therewith published said cartoon entitled "But, Judge!" making more definite the false imputations implied by the editorial and not expressed in words to the effect that fair and impartial justice was not being done between the State of Florida (represented in said cartoon by the little character as "Public Interest" being neither heard, recognized nor favored) and the defendants (represented in said cartoon by the large character beside the judge and on the bench and being heard, recognized and favored); and

Whereas, you, by said cartoon and editorial, have caused to be represented unto the public that concerning the cases of (A) the eight indictments for rape, (B) the said Brook Club case, and (C) the Teepee Club case, that the Judges of this Court fairly and impartially heard and decided the matters in said editorial mentioned and have thereby represented unto the general public that notwithstanding the great public trust vested in the Judges of this Court that [fol. 10] they have not discharged their duties honorably and fairly in respect to said pending cases as hereinbefore set forth, all of which tends to obstruct and interfere with

the said Judges as such in fairly and impartially administering justice and in the discharging of their duties in conformity with the true principles which you have so properly recognized in the forepart of said editorial above quoted as being incumbent upon them and each of them; and

Whereas, the said Miami Herald and the aforesaid publications were the acts and deeds of The Miami Herald Publishing Co., a corporation, and with like consequences and effect;

This is therefore to command you, and each of you, the said John D. Pennekamp and The Miami Herald Publishing Co., to be and appear before the Circuit Court of the 11th Judicial Circuit of Florida, in the south Circuit Court room in the court house of Dade County, Florida, at ten o'clock A. M., November 28, 1944, and then and there show cause if any you have why you should not be held and adjudged to be in contempt.

Done and Ordered this November 10, 1944.

Marshall C. Wiseheart, Paul D. Barns, Circuit Judges.

[fol. 11] EXHIBIT TO CITATION FOR CONTEMPT

Courts Are Established—

For the People

The courts belong to the people. The people have established them to promote justice, insure obedience to the law and to Punish Those Who Willfully Violate It.

The people maintain the courts by providing the salaries of officials and setting up costly chambers and courtrooms for the orderly and dignified procedure of the tribunals.

Upon the judges the people must depend for the decisions and the judicial conduct that will insure society—as a whole and in its individuals—against those who would undermine or destroy the peace, the morality and the orderly living of the community.

In Order that the courts should not be amenable to political or other pressures in their determination of matters placed before them, Florida Circuit judges are called upon to face the electorate less often than are other elective office holders.

So long are their terms, in fact, that in Dade county no Circuit judge, and only one judge of another court, has come to the bench by public choice in the first instance. All the others have been named by a governor to fill a vacancy caused by death or resignation, or similar circumstance.

Judicial terms in Dade county run:

1—Six years each for six Circuit judges.

2—Four years each for two Civil Court of Record judges.

3—Four years for the judge of the Criminal Court of Record.

4—Four years for the judge of the Court of Crimes.

5—Four years for County judge.

6—Four years for Juvenile court judge.

These twelve judges represent the majesty and the sanctity of the law. They are the first line of defense locally of organized society against vice, corruption and crime, and the sinister machinations of the underworld.

It Is beyond question that American courts are of, by and for the people.

Every accused person has a right to his day in court. But when judicial instance and interpretative procedure recognize and accept, even go out to find, every possible technicality of the law to protect the defendant, to block, thwart, hinder, embarrass and nullify prosecution, then the people's rights are jeopardized and the basic reason for courts stultified.

The seeming ease and pat facility with which the criminally charged have been given technical safeguard have set people to wondering whether their courts are being subverted into refuges for lawbreakers.

This Week the people, through their grand jury, brought into court eight indictments for rape. Judge Paul D. Barns agreed with the defense that the indictments were not properly drawn. Back they went to the grand jury for representation to the court.

Only in the gravest emergency does a judge take over a case from another court of equal jurisdiction. A padlock action against the Brook Club was initiated last spring be-

fore Judge George E. Holt, who granted a temporary injunction.

After five months, the case appeared Tuesday out of blue sky before Judge Marshall C. Wiseheart at the time State Attorney Stanley Milledge was engaged with the grand jury.

Speedy decision was asked by defense counsel despite months of stalling. The State Attorney had to choose between the grand jury and Judge Wiseheart's court.

The judge dismissed the injunction against the club and its operators. The defense got delay when it wanted and prompt decision from the court when it profited it.

On Oct. 10 Judge Holt had before him a suit by the state to abate a nuisance (bookmaking) at the Tepee Club.

Five affidavits of persons who allegedly visited the premises for the purpose of placing bets were introduced by the state over the objection of the defendants.

Judge Holt ruled them out, explaining in denying the injunction against the Tepee Club:

"The defendant cannot cross-examine an affidavit. The court cannot determine who is testifying and whether belief can be placed upon such testimony • • • The fact that such affidavits were taken before the State Attorney does not give them any additional weight or value."

This may be good law, exact judicial evaluation of the statutes. It is, however, the character of legal interpretation which causes people to raise questioning eyebrows and shake confused heads in futile wonderment.

If Technicalities are to be the order and the way for the criminally charged either to avoid justice altogether or so to delay prosecution as to cripple it, then it behooves our courts and the legal profession to cut away the deadwood and the entanglements.

Make it possible for the state's case, the people's case, to be seen with equal clarity of judicial vision as that accorded accused lawbreakers. Otherwise technicalities and the courts make the law, no matter what the will of the people and of their legislators.

(Here follows 1 photo, folio 11a)

But, Judge!

11a

[fol. 12] EXHIBIT TO CITATION FOR CONTEMPT

Why People Wonder

Here is an example of why people wonder about the law's delays and obstructing technicalities operating to the disadvantage of the state—which is the people—in prosecutions.

After stalling along for months, the defense in the padlock case against the Brook Club appeared before Judge Marshall C. Wiseheart for a decision. The State Attorney was working with the grand jury. The court knocked out the injunction. There was speed, dispatch, immediate attention and action for those charged with violation of the law. So fast that the people didn't get in a peep.

That's one way of gumming up prosecution. Another is to delay action. On March 29, Coy L. Jaggears, bus driver, was sentenced to fifteen days in city jail by Judge Cecil C. Curry on conviction of beating up a taxicab operator.

The arrest precipitated the notorious bus strike. As a result, Jaggears walked out of jail after posting a $200 appeal bond. The appeal never got further.

There you have the legal paradox, working two ways, but to the same purpose against prosecution. Speed when needed. Month after month of delay when that serves the better.

[fol. 13] IN THE CIRCUIT COURT IN AND FOR THE COUNTY OF DADE

RETURN OF RESPONDENTS, JOHN D. PENNEKAMP AND THE MIAMI HERALD PUBLISHING CO.—Filed November 28, 1944

Come now the respondents, John D. Pennekamp and The Miami Herald Publishing Company by their undersigned attorneys in response to the citation for contempt bearing date of November 10, 1944, and move to quash said citation on the following grounds:

1. The Court was without jurisdiction to issue said citation.

2. The said citation was not verified by any person and was not issued in form and manner required.

3. The publications mentioned in said citation were not contemptuous.

4. The publications upon which said citation was based constitute legitimate criticism and comment within the guaranties of Section 13 of the Declaration of Rights of the Constitution of Florida.

5. The publications upon which said citation was based constitute legitimate criticism and comment within the guaranties of the First and the Fourteenth Amendments to the Constitution of the United States.

6. The publications complained of created no clear and present danger to the administration of justice.

Further answering said citation the respondents, John D. Pennekamp and The Miami Herald Publishing Company, [fol. 14] show as follows:

1. That John D. Pennekamp is and was on November 2, 1944, the Associate Editor of the respondent, the Maimi Herald Publishing Company, which company publishes in Miami, Dade County, Florida a daily newspaper known as The Miami Herald; that said John D. Pennekamp, as Associate Editor thereof, did cause to be published the editorials complained of that appeared in The Miami Herald on November 2, 1944 and November 7, 1944, and the cartoon complained of that appeared in The Miami Herald on November 2, 1944. Respondents deny that the publication of said editorials and said cartoon created a clear and present danger to the orderly and fair administration of justice in the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Date County. On the contrary, these respondents affirmatively state that said editorials and said cartoon were intended to be and in fact were published in the interest of orderly and fair administration of justice in Dade County as if more fully set forth in the affidavit of John D. Penekamp, marked Exhibit "A", attached hereto and asked to be read as a part hereof and also in the affidavit of Jeanne Bellamy Bills marked Exhibit "B", attached hereto and asked to be read as a part hereof.

2. Specifically answering the allegations of the paragraph entitled (A) "Rape Cases", these respondents deny the particular facts set forth in the first paragraph referring

to the Rape Cases. Respondents are informed and believe that the indictment in Case No. 856 was typical, that the original indictment omitting formal parts is as quoted below, omitting the words underscored and that the amended indictment is exactly as set out below:

> [fol. 15] That heretofore, to-wit, on the twenty-ninth day of August, A. D. 1944, within the County of Dade and State of Florida, NEWTON REID BLACK, THEODORE ROBERT DIENGER and JOHN REMER MUIR unlawfully and feloniously an assault did make in and upon the body of one DOROTHY MAY WHEELER, a female over the age of ten (10) years, and did then and there unlawfully, feloniously, forcibly and against the will of her, the said DOROTHY MAY WHEELER, feloniously ravish and carnally know *her, the said* DOROTHY MAY WHEELER, contrary to the form of the statutes in such case made and provided, to the evil example of all others in like case offending, and against the peace and dignity of the State of Florida.

That as averred in the citation, a motion was made to quash the indictment in Case 856, the ruling upon which would control in the other cases mentioned. Whereupon the representative of the State Attorney's Office stated in effect that he believed the original indictment was in proper form, but to eliminate any question he would have these defendants immediately re-indicted by the Grand Jury which was still then in session. And thereupon, the Judge of said Court did sustain the motion to quash with respect to Case No. 856.

These respondents are informed and believe and upon such information allege that the representative of the State Attorney's Office did not agree in open court that said indictment No. 856, as well as the others, were so defective as to make it advisable that the state not go to trial upon [fol. 16] said indictments, but merely made the suggestion that new indictments might well be obtained to remove doubt and question.

Further answering these respondents deny that they withheld the truth and say that they had no such intention to withhold the truth. These respondents deny that the said cartoon did or was intended or could be considered to apply to these rape cases to make more definite any imputation

implied by the editorial, or to impute or suggest that fair and impartial justice was not being done between the State of Florida and the defendants in the Rape Cases; and deny that the State of Florida was represented in said cartoon by the character known as "Public Interest" and was not being heard or recognized or favored, and deny that in said cartoon the defendants in the Rape Cases were represented by a large character on the bench beside the Judge, who was being heard, recognized and favored; further that said cartoon could have no reference to the said criminal indictments since the first indictments had been quashed and the second indictments had been returned and had not been dismissed.

Respondents deny generally all of the statements in said paragraph (A) not herein specifically admitted.

3. Specifically answering the paragraph (B) entitled "Brook Club Case", these respondents deny the said cause was or is pending; on the contrary, they show that the same was terminated by final decree on October 31, 1944, when said cause was dismissed, as appears in said citation. They deny that no testimony was taken in said case by the State Attorney. On the contrary respondents are informed and believe and upon such information allege that on the hearing for preliminary injunction, where defendants were repre-
[fol. 17] sented by counsel, witness were sworn and testified for plaintiff; that the court by its order dated April 25, 1944, recited that "The court having considered the evidence submitted by the plaintiff, none having been offered by the defendants"; after which recital the Court granted the temporary injunction. Further in respect of the notice alleged in this citation to have been given State Attorney Stanley Milledge, setting the case for hearing for final decree on October 31, 1944, respondents are informed and believe and upon such information allege as follows:

The State Attorney upon receipt of said notice immediately notified both the secretary to Judge Wiseheart and counsel for the Brook Club that the grand jury was reconvening on October 30, 1944, at 10 A. M. that the State Attorney would be engaged with the grand jury from day to day until it was discharged some time prior to the end of its term on November 13, 1944, that the State Attorney could not be present before Judge Wiseheart on the stated date but he could be present at any

time after the grand jury had been discharged. The foreman of the grand jury had set October 30, 1944, for reconvening of the grand jury long before the notice of the final hearing was given by counsel for the Brook Club, and the State Attorney had already issued subpoenas for witnesses to appear before the grand jury on the said date and upon said date the State Attorney did personally examine a number of said witnesses before the Grand Jury in connection with the returning of indictments for violation of criminal laws of the State. The State Attorney requested that the hearing in this Brook Club case be deferred and did not understand that under the foregoing circumstances a hearing would be had in his absence. The State Attorney could not delegate either of his two assist-
[fol. 18] ants to appear before Judge Wiseheart in the Brook Club suit because the State Attorney had personally handled the case and neither assistant was familiar therewith. Notwithstanding this, the case was heard in his absence and dismissed.

Still further respondents are informed and believe and upon such information allege that by long practice and custom indulged in by all the judges in Dade County, Florida, one judge, except in cases of grave emergency, will not take over and dispose of the case of another judge where there is a contest and testimony has been taken and an injunction already issued. Whether or not Judge Holt was absent from the circuit on October 31, 1944, these respondents are not advised. In any event no grave emergency existed requiring transfer of the case to another judge. Respondents are informed and believe and upon such information allege that on October 31, 1944, the Brook Club would normally have been closed and would not have opened until January; that in fact, it had been closed throughout the summer, that notwithstanding these facts the case was set by opposing counsel for final hearing on the day that the State Attorney was engrossed in his duties before the grand jury and the cause was thereupon on said day dismissed. There were no suggestions in said editorial that the case was set or brought on for hearing by the judge but that, after many months' delay, it was heard when important duties before the grand jury precluded the State Attorney from appearing for the State.

These respondents deny any intent by either said editorial or said cartoon either in words or otherwise to interfere [fol. 19] with fair and impartial justice in the State of Florida and deny that the large character in the cartoon was beside the judge and on the bench and being heard, recognized and favored, but, on the contrary, these respondents respectfully show that it was the intention of said editorial and said cartoon to condemn and criticise the system of pleading and practice and procedure created by the laws of Florida, whereby such cases could long be delayed and then could be dismissed upon technical grounds in the manner herein shown. These respondents further say that it has long been well known of which matter this Court will take judicial knowledge, that the system of pleading and practice and procedure, particularly in chancery causes, as the same prevails in the State of Florida, is not modern and it thereby makes possible great delays and technical defenses which are not recognized, favored or allowed under the more modern systems of pleading practice and procedure prevailing in other states; and that the adoption of this improved procedure has been advocated for many years by prominent members of the Bench and Bar before the Supreme Court of Florida.

And further answering, these respondents deny that said editorial of November 7, 1944, entitled "Why People Wonder," created any clear and present danger to the administration of justice in Florida, but, on the contrary, these respondents aver that it was the intent of said editorial to criticize the system of procedure adopted under the laws of Florida, whereby delays and technicalities are permitted to defendants. Respondents deny generally all of the statements in said paragraph "B" not herein specifically admitted.

[fol. 20] 4. Further answering paragraph entitled (C) "Tee Pee Club Case," these respondents deny the making or intention to make any false imputations by either said editorial or the said cartoon; they deny that there was any representation by said cartoon that the defendants, represented by the large character in the cartoon, were beside the Judge or that he was on the bench or that he was being heard, recognized and favored, or that the character denominated "public interest" was being not heard, recognized or favored. They aver that the said cartoon

did not have any reference to the Tee Pee Club case and could not by any fair intendment be held to refer to the Tee Pee Club case in any respect. On the contrary, these respondents aver that it was the intent, as expressed in said editorials, to convey the meaning that plain people were confused and were shaking their heads in futile wonderment that the system of laws, pleading, practice and procedure should permit and compel the judiciary to uphold defendants' technical defenses and be compelled to grant dismissals upon technical rather than substantive grounds.

Respondents are informed and believe and upon such information allege that as a matter of fact it has long been the practice both by common usage and by practice in the State of Florida, to sustain and grant temporary injunctions and receiverships solely upon affidavits, and that in fact and in truth said judge in refusing to consider the affidavits submitted in support of the application for said injunction, was acting contrary to the practice usually pursued in such cases. These respondents further aver that [fol. 21] the said editorial, in commenting upon said matter, was referring to an order signed October 10, 1944, by the Honorable George E. Holt, duly recorded in Chancery Order Book 702, page 455, records of said Court, denying plaintiff's motion for temporary injunction, and the further order of said court bearing date October 12, 1944, denying the motion of the State Attorney to set aside the order denying the injunction, and which said matter so commented upon referred to the past act of the said court in so denying said injunction and refusing a rehearing thereof and upon which the public and these respondents had a privilege to freely comment and that said comment could not create any clear and present danger to the administration of justice in the said court. Respondents deny generally all of the statements in said paragraph "C" not herein specifically admitted.

5. Further answering the citation in its entirety, these respondents show that conditions with respect to law enforcement in Dade County, Florida, are not good and that in many respects the machinery for law enforcement has broken down and the system has been subjected to widespread public comment and criticism and that such conditions existed at the time of these editorials. It became

the right, if not the duty, of citizens and of vehicles of public information including respondents herein to call attention to these conditions and to comment upon the same to the end that improvements might be made. This general situation and the public concern therewith is reflected in the report of the grand jury of the Circuit Court of Dade County, Florida, to this court, dated on or about November 13, 1944, a copy of which is hereto attached [fol. 22] marked Exhibit "C" and by reference made a part hereof. This report calls attention to the breakdown in law enforcement, to the widespread existence of illegal gambling activities, to the danger which these conditions engender and states in part as follows:

> The general purport of the report is to indict a system of law enforcement of the gambling laws, called the "liberal policy." We have tried to show what this policy is, and its consequences. We have made several concrete recommendations, but fundamentally what we are driving at is to make the situation clear in the hope that an informed public opinion, which is the only possible basis for good government, will exert the pressure necessary to bring lasting improvement.
>
> There are zones of gambling operations, both as to areas and as to kinds of gambling; for example, one syndicate operates only in Miami Beach and another syndicate operates only on the mainland. While a few small independent gambling operators are tolerated, the business as a whole is well organized and controlled.
>
> It seems clear that the Vice Squad, now called the Moral Squad, was invented to facilitate political con- [fol. 23] trol over gambling. All other policemen have for years been given thoroughly to understand that they are not to enforce these laws.
>
> The close organization of the gambling racket requires the participation of only a few people, and they have every incentive to deny the payments of bribes and none to testify truthfully. These men have never had any reason to fear penitentiary sentences for their operation of gambling rackets. If a few of them were sent to the penitentiary, and all the others feared pros-

ecution, it could reasonably be expected that some of these big gamblers would turn state's evidence and testify.

The machinery of society for combatting crime is its police, prosecutors and courts. These agencies can not combat crime unless they believe in combatting crime and are sincerely trying to do so.

We found no effort by any officer except the State Attorney to obtain evidence against the big gamblers. We emphasize the fact that the existence of organized [fol. 24] rackets is not due to lack of men—it is due to lack of desire. It is perfectly absurd to claim that the police, prosecutors and courts could not deal with this situation. We are thoroughly convinced that the statements of several police officers are true when they said that an organized racket cannot possibly exist without political protection.

The municipal police mostly handle the cases within the municipalities, and the sheriff's office the cases arising in the "County". In the latter case, the fines imposed by the state courts go into the County's Fine and Forfeiture Fund. The same "liberal policy" applies here as in the city. The fines are larger, but the arrests are less frequent, and the chances of the defendants being dismissed before trial are excell[illegible]

The system of prosecuting one man for a felony and another for violating a city ordinance on the same kind of offense, depending merely upon place of occurrence, naturally suggests law enforcement for revenue only.

The term "liberal policy" has been coined, locally, [fol. 25] to give a nice name to a system of permitting violation of the laws for the profit (huge profits) of those permitted to do so * * *.

And we can see that by the continued progress of attracting more and more undesirables we might eventually acquire a national reputation which would cripple the wholesome future development of the area not only industrially and as a resort area.

> Even if it were true that there is some economic gain from the rackets this could not justify a complacent surrender of our community dignity and self-respect.
>
> We are convinced that a vast improvement in our local government, generally, as well as in law enforcement in particular, could be obtained and maintained if civic-minded individuals and organizations took an active and sustained interest in this subject. We do not mean some mere passing of regulations—we mean a thorough examination into various phases of our local government so that its actual operations can be understood. We suggest that each civic group undertake to acquire first-hand information as to some partic-
> [fol. 26] ular part of our local government so that this information could be available not only to its own members but to other civic groups and the public at large through the cooperation of the newspapers. By a constant interchange of this kind, public information as to the conduct of its business would soon become well informed.
>
> We note some indications that the gambling racketeers are proceeding with expensive preparations apparently on the assumption that those in authority are favorably inclined.

Under the legislative recommendations and comments with respect thereto, after recommending that the statute Law be amended to make proof simpler and presumptions more favorable to the State and recommending that procedure be rendered more efficient, this comment is made:

> The laws generally are all in favor of the criminals. We agree with the State Attorney that more consideration should be given to the protection of society. There are entirely too many loopholes.

Under these circumstances, it is respectfully shown that citizens of Dade County and those whose business or pro-
[fol. 27] fession it is to disseminate information to the public, had the right if not the duty openly and forcefully to discuss these conditions to the end that these evils that are profoundly disturbing to the citizens of this county, might

be remedied. The publications complained of did nothing more than discuss the generally recognized weakness and breakdown in the system of law enforcement and call for its improvement.

These respondents do invoke and rely upon a freedom of speech and of the press so unequivocally preserved for them by the Constitution of the United States and of the State of Florida.

Any matter or thing in said citation contained not herein specifically denied or admitted is hereby expressly denied.

And now having fully answered the said citation, the respondents pray that the same be discharged and dismissed.

Robt. R. Milam, Milam, McIlvaine & Milam, Attorneys for Respondents; Elisha Hanson, Of Counsel for Respondents.

[fol. 28] *Duly sworn to by John D. Pennekamp and James L. Knight. Jurat omitted in printing.*

[fol. 29] EXHIBIT "6" TO RETURN OF RESPONDENTS

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR THE COUNTY OF DADE, SPRING TERM, A. D. 1944

Report of the Grand Jury

To the Honorable Judges of the Above Styled Court:

We, the Grand Jury, duly impaneled and sworn to inquire in and for the body of the County of Dade, impaneled at the Spring Term, A. D. 1944, of the Circuit Court of the Eleventh Judicial Circuit of Florida, respectfully report to the Court that we were convened on May 15, 1944. William P. Baird was appointed Foreman by the Court and C. M. Long was appointed Vice-Foreman. J. E. Bandy was designated as Clerk. Shortly thereafter we started the investigation of capital cases.

We have considered capital cases against eighteen (18) persons, some of whom are in jail and one for whom the

authorities are searching. We have returned the following indictments:

Murder in the first degree	8
Murder in the second degree	1
Manslaughter	1
Rape	10
Total	20

We have also considered other cases and returned indictments against 8 persons as follows:

Perjury	1
Gambling	4
Bribery	2
Crime against nature	1
Total	8

[fol. 30] Grand Jury Report on Gambling Investigations in Dade County

The Grand Jury has made an extended investigation of organized gambling in Dade County, but so great is the field necessary to cover that time did not permit as thorough inquiry in the other municipalities which permit organized gambling as was made in Miami.

The investigation covered more than 1500 pages of testimony, which included that of all five members of the Miami City Commission, the City Manager, the Director of Public Safety, the Municipal Judge, the present and two former Chiefs of Police, all of Miami, fifteen City of Miami police officers of various rank, the Sheriff of Dade County and his Chief Deputy, County Solicitor and one of his assistants, three unsuccessful candidates for the City Commission, representatives of the Southern Bell Telephone & Telegraph Company and of the Western Union Telegraph Company, local representatives of the "wire service" which supplies local gamblers with racing information, two lawyers who represent some of the big gamblers, and sixteen gamblers, both big and small, and a number of other persons.

The facts in this report are taken from the transcript of testimony taken before the Committee or the State Attorney

on subpoenas of the latter; from a study of official records and from our own observation and experience. While the report is critical of the conduct of a number of public offices, we have deliberately understated the situation whenever particular offices are referred to. For the most part we have confined statements of fact relating to any particu-
[fol. 31] lar office to what the holder of the office himself said.

The general purpose of the report is to indict a system of law enforcement of the gambling laws, called the "liberal policy". We have tried to show what this policy is, and its consequences. We have made several concrete recommendations, but fundamentally what we are driving at is to make the situation clear in the hope that an informed public opinion, which is the only possible basis for good government, will exert the pressure necessary to bring lasting improvement.

The testimony of witnesses upon which indictments were returned is not referred to in this report and constitutes no part of it.

There are zones of gambling operations, both as to areas and as to kinds of gambling; for example, one syndicate operates only in Miami Beach and another syndicate operates only on the mainland. While a few small independent gambling operators are tolerated, the business as a whole is well organized and controlled. By organization a few big gamblers make the necessary arrangements with a few politicians. These big operators do not personally run the gambling joints they control. In some locations they hire employees and in others they form a partnership with the smaller gamblers who personally run the place on a partnership basis. The big gambler, referred to as the "bankroll", gets 50% of the net profit after all expenses of operation are deducted, including rent, salaries, telephones, "wire service", fines, bail bonds, lawyers' fees, accountants' fees and the other items that constitute expenses of conducting an illegal operation. While a few policemen, mainly members of the Vice Squad, have engaged in petty chiseling, we [fol. 32] are convinced that a great majority of policemen receive no profit out of the racket. In fact, few of them are in a position to get graft if they wanted it.

The organization of the law enforcement machinery, which, of course, is concerned with gambling as well as

other criminal laws, is quite complicated. So complicated is it that most people do not understand just how it operates and whom to hold responsible.

City police are supposed to enforce all state laws and municipal ordinances within their city limits. The same offense is frequently a violation of both state law and municipal ordinances. When this occurs proper practice is to prosecute for violation of state law in the state courts as the punishment is more severe. As to gambling cases, however, the practice has been both in Miami and Miami Beach for the police officer to bring such cases only in their city courts, which of course can punish only for violating a city ordinance. The reason for this is clear—their bosses, the city council or commission, want the revenue to come into their city treasuries.

Policing in the areas outside any municipality is done by the Sheriff and his deputies and by the Constable of the district. The Sheriff can arrest anywhere in the county but he concentrates his men in the areas that are not covered by City police. The Constable usually brings his cases before his Justice of the Peace, who, if possible cause to prosecute is shown, binds over the defendant for prosecution in one of the three State courts having original jurisdiction. The Sheriff's cases are turned over to the County [fol. 33] Solicitor, who has the sole power to prosecute in the Court of Crimes and the Criminal Court of Record, except where punishment may be death, when the State Attorney prosecutes on Grand Jury Indictment in the Circuit Court.

The State Attorney can prosecute only after Grand Jury indictment, but the County Solicitor prefers his own charges, after considering the evidence. This officer is often referred to as a one man Grand Jury because as to all except capital cases, he, by himself, can do what the Grand Jury can do in returning indictments. This together with his power to summon witnesses before him and examine them under oath, makes the County Solicitor a very powerful officer. All gambling cases, prosecuted as a violation of State law, must be prosecuted by his office. All such prosecutions must be commenced by information which can only be filed by the County Solicitor. This is true even when the Grand Jury indicts. The County Solicitor and the State Attorney are permitted by law to dismiss any case even after prosecu-

tion has begun. When fines are imposed in the State Courts they go into the Fine and Forfeiture Fund of the County. The Sheriff, Constable, Justice of the Peace, State Attorney and County Solicitor and the State Court Judges are elective officials. All municipal police from the Safety Director down are appointed, as is also the City Judge, under the administrative powers of the City.

All of this confusing system of law enforcement makes it very difficult for the average citizen to fix responsibility. Over all responsibility for satisfactory results is in fact divided. This makes it easier for those sharing the re- [fol. 34] sponsibility to "pass the buck". To make such a system function with even moderate success, requires that all officials and officers charged with a duty, possess a sincere desire to cooperate in combatting all crime. The presence of a form of law violation, which yields, tremendous profits naturally invites laxity. Laxity of law enforcement in one field induces laxity in others, by countless subtle means.

Until quite recently the handling of gambling law violations has not been under the sole jurisdiction of the Miami Chief of Police. Guy Reeves, who was Chief of Police from 1928 until 1932, was not permitted by the City Commission to exercise any power whatever over this type of law enforcement. Since that time there has been constant interference from City Commissioners as to the enforcement of the gambling laws. One City Commissioner testified that he put a certain police officer on the head of the Vice Squad as a reward for the latter's political services during the preceding City campaign. While other City Commissioners have not been as frank, we are satisfied that the one referred to is not alone in this respect. It seems clear that the Vice Squad, now called the Moral Squad, was invested to facilitate political control over gambling. All other policemen have for years been given thoroughly to understand that they are not to enforce these laws.

Another aspect of this policy is observed in the customary practice of horse bookies pleading guilty, accepting fines and returning immediately to work. When this practice [fol. 35] prevailed, it can safely be assumed that the policy is satisfactory to the big gamblers who are actually the ones who pay the fines of their small fry. By having some cases for the newspapers to publish every day or two this method

creates the public impression that the laws are being enforced.

A result of political handling and control of gambling is that two positions on the police force are considered by policemen to be hot spots and undesirable for an officer who wishes to preserve his reputation and his job. These are the head of the Vice Squad and the Chief of Police. Recently, when Chief Quigg was removed, no senior officer on the force wanted the job. This job is a hot spot because the Chief has been technically recognized for all law enforcement and yet is not permitted the authority to do so. The Chief of Police can lose his job for permitting the very conditions which were politically forced on him.

The Vice Squad has, from time to time, functioned in different ways. Occasionally it has been in the hands of officers who cracked down on the gamblers, and during such periods, it is interesting to note that the gamblers ceased to plead guilty and fought the cases bitterly. Usually the Vice Squad operated on a "liberal policy" but sometimes in a non-discriminatory way, that is they did not arrest the little gamblers any more than they did the big gamblers. At other times, the Vice Squad has operated on the basis of "liberality" as to some of the big gamblers and very severe policy as to the little gamblers and even some of the big ones not then in political favor. Whatever method the Vice Squad followed at any particular time depended on the political desires of the political sponsor of that particular [fol. 36] head of the Vice Squad. The Vice Squad can and has induced some of the little operators to give up business for themselves and get one of the big fellows to "bankroll" him. He finds that 50% of the net profits under the latter arrangement yields more returns than the 100% he got before. The method used to persuade the little fellow to do this is illustrated by the man who was raided 9 times in 8 days while across the street another bookie had not been molested in years.

The officials acts of the Miami City Commission speaks its policy on enforcement of the vice laws. This past year the Commissioners stated in their budget that they expected to receive $170,000 in fines and forfeitures. This could be obtained only by allowing gambling houses to operate. A farmer who intends to butcher all his cows expects no milk. The police understand (as well as any intelligent per-

son could) that the Commissioners expect them and the Municipal Court as a joint collection agency to raise the revenue stated. Apparently the police never considered bringing gambling house operators to trial in the State court which has jurisdiction over felonies.

The "wire service" and the telephones are the life blood of the horse booking racket. The "wire service", national in scope, is a net work of leased circuits from the many horse track locations to centers of population where the politicians permit book-making. The circuit to Miami is leased by Postal Telegraph Company, now a part of the Western Union Company. From its present terminus at 544 N. W. 2nd Avenue it is distributed over the local telephone system to the various bookmakers. Charges for the service depends upon the volume of business done by the [fol. 37] customers. Wire service charges fluctuate greatly, suggesting that political campaign donations and the like are added to the cost of distributing up to the minute horse racing information.

The State Manager of the Southern Bell Telephone Company has offered to cooperate with law enforcement authorities in so far as the Company can do so without itself assuming the role of policeman. The State Attorney has informed us that he will request the Telephone Company to discontinue furnishing telephone service to the "wire service" locations and will cooperate with and assist the Company in defending its legal right to do this against any attack that may be made in the Courts. We commend the State Attorney for this and to strengthen his request, we heartily join him in it and request the full support and cooperation of the Southern Bell Telephone & Telegraph Company.

While we are aware of the fact that the dissemination of racing information has been held legal by our courts, nevertheless this business exists only to further an illegal operation. In fact without it, the organized racket would disintegrate, although bookmaking on a restricted, sneak basis might continue, It would certainly cease to be a political power.

In view of the fact that the Bell Telephone Company discontinued its leasing of circuits for this purpose a number of years ago on the request of the Department of Justice, we now request the Western Union Telegraph Company to

[fol. 38] discontinue this practice also. Aside from the purpose to which this "wire service" is used, it seems clear that the legitimate needs of the public for these facilities is a strong added reason for this request. We cannot understand leasing wire circuits to convey gambling information while general public use of these facilities is restricted.

Another device in Miami which is undesirable is the manner of selecting a municipal judge. The Miami municipal judge is appointed by the Commission from election to election, or for two years. Who is going to be appointed is an unpublished but potent campaign consideration. One commissioner testified that many people asked him if he would vote for a particular man for judge, if elected commissioner. On the response being favorable the support followed. The testimony reveals instances of direct interference by commissioners, but the full extent of this is difficult to determine. At all events, the city judge is in a position where commissioners can tell him what to do, but still disclaim all responsibility for his actions or even knowledge of them. The city judge should be entirely freed of political control by the Commission by holding an independent elective office.

The "liberal policy" of enforcing gambling laws has also applied in Miami Beach, Hialeah and in the unincorporated areas. As we said in the beginning, time did not permit a detailed examination as to Miami Beach and Hialeah, but, basically, the same system of political handling of the gambling situation is quite evident.

The very presence of gambling naturally suggests the existence of some bribery. In the very nature of the crime [fol. 39] bribery is extremely difficult to prove. The close organization of the gambling racket requires the participation of only a few people, and they have every incentive to deny the payments of bribes and none to testify truthfully. These men have never had any reason to fear penitentiary sentences for their operation of gambling rackets. If a few of them were sent to the penitentiary, and all the others feared prosecution, it could reasonably be expected that some of these big gamblers would turn state's evidence and testify.

The big gamblers have innumerable ways of rewarding their friends besides outright bribery. If the recipient of their favors is a lawyer he can earn very handsome fees for

handling real estate transactions and in other purely civil matters. If the recipient is a business man every profitable but technically legal business transactions can come his way. So far as the results to the public are concerned it makes little difference as to what it takes to get the politicians to carry out the policy of the rackets. The result is the same whether or not an official takes graft in addition to campaign funds and political support.

The only effective way of eliminating corruption is to destroy the source of the corruption. We realize, of course, that it is no more reasonable to think that gambling can be entirely eliminated than it is to think that murder, or robbery, can be eliminated. The war against crime must constantly be waged, as crime is always present in varying degrees. The machinery of society for combatting crime is its police, prosecutors and courts. These agencies can-[fol. 40] not combat crime unless they believe in combatting crime and are sincerely trying to do so.

The testimony before us conclusively proves that the organized gambling racket can be destroyed and that this can be done even with the facilities now at hand. The main if not the only thing which stands in the way of destroying the rackets is that some of those charged with the duty of enforcing the gambling, as well as other laws, do not desire to do so. If all law enforcement agencies decided to enforce the gambling laws, we venture the prediction that 90% of the gamblers in this vicinity would leave [illegible] manently over night. One gambler testified that he quit business last April because he had heard that one bookie got a ten-day jail sentence. He had been booking here in one location for sixteen years, but just this much of a jail threat was enough for him. Every law enforcement officer, except the County Solicitor, stated that the imposition of only a few jail and penitentiary sentences would suffice to break up the racket. Two Miami police officers testified that if given a free hand they could close and keep closed all open gambling in Miami. Most police officers would be highly delighted to see the rackets destroyed and kept out of this community, as they know that this is the only way to keep politics out of the police department.

We found no effort by any officer except the State Attorney to obtain evidence against the big gamblers. We emphasize the fact that the existence of organized rackets is not due to lack of men—it is due to lack of desire. It is

perfectly absurd to claim that the police, prosecutors and courts could not deal with this situation. We are thoroughly convinced that the statements of several police [fol. 41] officers are true when they said that an organized racket could not possibly exist without political protection.

To illustrate what the "liberal policy" has produced, and can produce again, we cite the case of former police officer Huttoe, for years head of the Vice Squad and one of the principals in the much publicized Quigg-Huttoe "feud." He appeared, at his own request, before an investigating Committee and the State Attorney. Other than permanent records no source except his own voluntary statement is used in this portion of our report.

About 1935 he was first assigned to vice work. His rise in political and financial importance started at about the same time. He played politics in the police department, with the City Commissioners, and with candidates for the Commission. He says, he "had to" do this. He was ambitious to get promoted. He sought the favor of the Civil Service Board Attorney, and had some mutually profitable business dealings with a Board member. He passed his civil service examinations first for Sergeant and then Lieutenant, concerning the legality of which there was some controversy but nothing came of it. We do not criticize the present work of the Civil Service Board, but there must have been something wrong then, as a photostatic copy of a part of Huttoe's examination (in his own handwriting), made a part hereof, clearly indicates.

Huttoe recounted some of his duties in connection with his vice work. One incident was being sent out to get voters, by affidavit, to remove their names from petitions for the recall of City Commissioners. In connection with this same chore, he related being sent to a particular City [fol. 42] Commissioner to use his "influence" to get the City Clerk fired. His account of how he did this—"I did not feel like that. I went and told (this Commissioner) that I felt he should not fire him and insisted he could not fire him."

This officer freely stated that he was on excellent personal terms with several of the big gamblers, visiting back and forth. In this way he acquired a great deal of what he calls "information." What this consisted of, and how he got it, is reflected in the following from the record of Huttoe's gambling and sordid story to our Committee: "I have

had gamblers sit down and talk to me and tell me about different pay offs and different things. I have a piece of paper where I have jotted it down while they were running the Royal Palm Club, they were paying somewhere in the neighborhood of $7,000 a week graft. In other words, they had money besides that. They had a bunch of politicians on the payroll running anywhere from $8 to $25 each. Then the politicians called up Art and said: "I have a man I would like you to put on." How much they got depended on how much political influence they had. Besides that the "city" was supposed to get I think $3250 a week pay off and the "county" $3150 and that did not include constables and justices of the peace if they got any."

And another quotation from Huttoe—"Take anyone on the vice squad and any gambler, especially Padgett, likes to tell how much influence he has. He told me when drunk about pay offs and who he paid and where he made it and all about it."

We think it can — reasonably assumed that big gamblers do not freely regale the head of the Vice Squad with such "information" if they think he is interested in sending them to the penitentiary.

[fol. 43] As with most police officers struggling along on a small salary, Huttoe used to have financial troubles, necessitating small salary loans as recently as 1935. By 1940 he had become a Lieutenant of police, and he had progressed financially enough to report in his income tax return for that year, in addition to his official salary, the sum of $3700, which was received from a well-known gambler. Huttoe's explanation was that he won an election bet, and if his election judgment had been bad the gambler was entitled to $5800 of the Vice Squad leader's money. Even as explained, the act constituted a felony. It is useless now to indict since the statute of limitations has run. We call to the attention of the Chief of Police that the statute does not run as to removal from the police department. This man should have been removed years ago. If the evidence on the charges upon which he was dismissed in August, 1944 by the New Miami Director of Public Safety, Captain Dan D. Rosenfelder, proves insufficient new charges should be preferred, as this man should not be given the power of a police officer.

Huttoe could not have achieved political power and have carried on this wide range of activities for nine years

without political sponsors. He, himself, asserted that the charges upon which he was afterward fired in August 1944 concerned his political activities, which were well known long before his reassignment to leadership of the Vice Squad in June 1943, over the objection of the Chief of Police. Aside from testimony on the subject, this sequence of events tells the old story of political handling of the gambling situation.

Nominally, Lieutenant Huttoe was subject to the orders of the Chief of Police, but he recounts that when the Chief [fol. 44] ordered him to close a certain gambling place he replied: "You just tell them, I am not going to knock them off tonight; I might not for a week. I don't know what I am going to do yet."

In this connection we call attention to an unwillingness of several City of Miami Commissioners to shoulder their responsibility for the police politics. The Miami City Commissioners have acted as though the so-called "feud" between former Chief Quigg and Huttoe had nothing to do with them and that they had no responsibility for it. There will be no more feuding if the Commissioners will insist on good results and leave the method of obtaining them to the administrative police officers. The testimony of one of the Commissioners showed a shocking ignorance of actual conditions, although he publicly advocates the cure for them.

Some of these gentlemen seem to forget that the City Manager form of government does not absolve them of responsibility. They hire and can fire the City Manager, who, as the administrative head of the City's business is responsible for the police department through a Safety Director, whom the Manager can hire and then fire if he fails to do his job. The City Manager is not responsible to the people; he is responsible to the Commission. The Commissioners, and they alone, are directly responsible to the people not only for their legislative duties in passing ordinances but in understanding and evaluating the administrative work. We urge the City Commissioners to learn more about how the police department functions, through the department reports, however, and not by interference with police work. We urge that this interest manifest itself by keeping the department out of politics, by

[fol. 45] providing funds for an adequate and modernized police force with pay sufficient to attract and hold the right type of men, and with enough pay and security of position to remove the temptation to chisel.

We recommend to succeeding Grand Juries a continuing inquiry into the political handling of law enforcement, wherever it may appear, for law enforcement and politics will not mix. We urge all appointive law enforcement officers of whatever agency to report to succeeding Grand Juries all improper political interferences with their official duties. We hope there is an end to the conditions under which a man must choose between violating his oath of office or losing his job. We urge officers to stick to their oaths, and enlist the aid of the Grand Jury when any pressure is exerted to make them violate their oaths of office.

We commend Safety Director Rosenfelder for a fine beginning at the job of reorganizing a police department which was badly demoralized as a result of politics. Particularly do we commend his training and employment of negro police for patrolling the negro section. The results have been remarkable. Since September 1, 1944, the State Attorney's office reports a reduction in homicides from this section of nearly 50%, directly attributable to this constructive step.

We are also favorably impressed with Chief C. O. Nelson, a retired Inspector of police in New York, who has lived here five years. He is not interested in playing politics. We believe that if let alone politically Rosenfelder and Nelson will do a good and gadly needed job. We also believe that these men will resign rather than permit political interference with their duties.

[fol. 46] We believe that Mr. Rosenfelder and Chief Nelson are doing their best to destroy the organized rackets and they have already achieved a fair measure of success. We believe that they will make continued improvements in this field as well as in all other fields of law enforcement. We must observe, however, that the old habits of some — their men, trained in the Huttoe school of law enforcement, are not easily broken. We observe one example of this in the failure to deal with slot machine violations. While technically these machines, by virtue of the legislative joker slipped through at the 1941 session are not, in themselves,

illegal, everyone knows that these machines are actually gambling devices, as no profit could be derived from them otherwise. It is possible to obtain evidence that the occasional winning player gets paid off over the counter, yet the morals squad is doing little or nothing about this kind of violation. We urge all Chiefs of police, constables, the Sheriff and his deputies to take prompt steps as to this particularly pernicious racket, which operates on precisely the same principle as bookmaking does. The machines are owned by various companies, who service and maintain the machines, pay the licenses on them, and divide the net profits fifty-fifty with the location operators. In all the various forms of gambling the player is a sucker who cannot win over any period of time, but in playing the slot machines he has virtually no chance whatever since the machines are set not for gambling but for robbery. These machines are also particularly vicious because they are under the very noses of children wherever they go, producing demoralizing influence both as to educating the children to become gamblers and educating them to disrespect the [fol. 47] law. We urge the reinstatement of the 1937 law outlawing slot machines, but meanwhile we urge the police officers of the various law enforcement offices to increase their vigilance.

The "liberal policy" is observable in the practice of municipal police officers bringing gambling cases occurring within the city into the municipal court and not in the state courts having jurisdiction over felonies. The felony of operating a gambling house if committed with- the City of Miami is not prosecuted as such but as a violation *qn* of a municipal ordinance. The same felony occur-ing across the street but outside the city limits is brought in a felony court. The municipal police mostly handle the cases within the municipalities, and the sheriff's office the cases arising in the "County." In the latter case, the fines imposed by the state courts go into the County's Fine and Forfeiture Fund. The same "liberal policy" applies here as in the city. The fines are larger, but the arrests are less frequent, and the chances of the defendants' being dismissed before trial are excellent.

In the "County" cases the defendants are usually arrested by deputy sheriffs, booked at the county jail and

released upon their filing bond, currently in the amount of $500, to insure their appearance at the trial. The evidence obtained is presented to the County Solicitor, whose duty it is to file an information, charging the arrested persons with whatever offense, if any, the evidence warrants. In a preceding part of this report we have already indicated the power that resides in the office of County Solicitor. The [fol. 48] defendants plead to this information, as in other criminal cases, and the case proceeds to trial on the date set by the court. Fines when imposed go into the County treasury, as distinguished from the fines imposed in city court which go into the city treasury.

The system of prosecuting one man for a felony and another for violating a city ordinance on the same kind of offense, depending merely upon place of occurrence, naturally suggests law enforcement for revenue only. In order to make a detailed comparison between the records of the cases handled by the City of Miami and the cases handled by the County Solicitor, the Grand Jury's committee, earlier in its investigation last June, requested the Solicitor to furnish data on all such cases handled by him for a two-year period. This the County Solicitor refused to do. The Committee -en procured as much of this information as was available from the public records from the clerk of the court, the expense being paid by the County Commissioners. This data of the gambling felony cases covered the two-year period ending July 1 1944. When this record was examined the reason for the Solicitor's unwillingness to have his records examined became apparent. The record referred to over 132 felony cases where the evidence obtained was submitted to the Solicitor for further action. Of ~se 132 cases 30 were dismissed in full by the Solicitor. In 16 of them where the defendants were charged with a misdemeanor, as well as a felony, the felony charges were dismissed, and in 9 instances the Solicitor did not file any information at all. This makes a total of 55 cases out of 132, or 41½ per cent in which the court or jury did not pass on the guilt or innocence of the persons arrested or charged.

[fol. 49] Tabulation of the 132 cases in Criminal Court of Record (having jurisdiction over gambling felony cases)

for period July 1, 1942 to July 1, 1944, as taken from Court Records.

Nolle prossed (dismissed) as to all charges	30
Nolle prossed as to felony charge, leaving misdemeanor (In 15 of which the defendants pleaded not guilty, waived jury, were convicted and received a suspended sentence, in one the defendant plead guilty to a misdemeanor and was fined $100 and costs)	16
No information filed	9
Equals 41½% of total number of cases	55

The Remaining Cases

Acquitted after trial	5
County Solicitor accepted plea of guilty to misdemeanor and all defendants fined average of $93 each and costs	13
Defendants pleaded guilty to felony and fined an average of $162.50 and costs	10
Defendants pleaded not guilty or nolo contendere, waived jury, convicted of a felony and fined average of $217.10 and costs	47
Defendants pleaded not guilty, waived jury, found guilty of misdemeanor and fined costs only	1
Defendants pleaded not guilty, waived jury, convicted of a felony and sentenced to penitentiary for 6 [fol. 50] months	2
	78

The court files, of course, did not contain any information as to the Solicitor's reasons for dismissing or failing to file an information on these cases, since the law does not require a prosecutor to assign any reason for his dismissals of prosecutions. Our Committee then gave the County Solicitor a list of these 55 cases and requested him to bring before the Committee his office files on these 55 cases to determine, if possible his reasons for not completing these cases. Obviously, such a condition reflected a very sad state of law enforcement. If the evidence obtained was of such a poor quality that it was useless to prosecute, this fact should become known to the Grand Jury, as well as the Solicitor's reasons for starting prosecutions without suffi-

cient evidence. But whatever the cause this exceedingly high percentage of dismissals required further explanation.

In a few of these causes where the evidence was not furnished by law enforcement officers the witnesses had left the State and could not be obtained for trial. In the vast majority of cases, however, the County Solicitor's explanation of dismissals shows an extremely casual method of handling such cases. In many instances the Solicitor had no files whatever, and his explanations of his dismissals were vague and rambling, and in many cases he admitted that he was just guessing as to why certain cases were dismissed. In a number of instances he concluded that the evidence was insufficient or illegally obtained, and yet he also asserted that the deputy sheriffs who procured this evidence were competent and he found no fault with their work. We [fol. 51] cannot reconcile both of these statements. The Solicitor evidently considered the work of the deputy sheriffs competent since, based upon their evidence, he filed the informations in the first place.

We appreciate the fact that a prosecutor is not responsible for the sentence imposed by the court. We also are aware that lax prosecutions and frequent dismissals can also discourage the court from imposing stiff sentences on those cases left to its decision. Bringing to trial the big operators might also bring different sentences.

The examination of the 132 cases referred to showed on their face that the same gambling houses were frequently involved, and many of the defendants were repeaters Until it was called to his attention by the Committee the County Solicitor said he had not observed this peculiarity about his own cases. From the examination of a few gamblers the Grand Jury has learned the identity of at least one of the big gambling operators whose places and employees appeared from time to time in the record of the County Solicitor's cases. It was astounding to hear the Solicitor say that he did not know the identify of any of the big gamblers who controlled these places, and who employed the persons involved in the Solicitor's prosecutions, and he said that he knew of no way to find out. We quote from the record at the County Solicitor's appearance before our Committee:

Q. "Is the gambling business here in Dade County conducted mostly by independent operators or is it largely by syndicated groups?"

The Solicitor: "I don't know."

[fol. 52] Q. "Do you have any way of finding out?"

The Solicitor: "No sir."

Q. "Have you observed that over the course of years at certain locations arrests are constantly being made at the same places?"

The Solicitor: "I don't think so. You say they are constantly being made?"

Q. "Yes, at the same locations arrests are made from time to time, as for example, the Black Cat, 888 Red Road, that over a period of years a constant stream of men have been arrested, informed against, plead guilty of have been adjudicated guilty for operating in that same location."

The Solicitor: "I don't know."

Q. "You don't know whether that is true or not?"

The Solicitor: "No."

We observe that it is true as shown by the records of the Solicitor's cases.

A few moments later the following was said at the hearing:

Q. By a Grand Juror: "It is mostly local men, though, that are running these gambling organizations, isn't it?"

The Solicitor: "Some years ago, people who were interested—not financially, but who believed that there ought to be some gambling down here for tourists, also said we should not have any of these gangsters down here from big cities. That had happened in the past. From that time on, as I understand it, there have been no gangsters down here operating so far as anybody could tell."

We assume that the "people" the Solicitor referred to who were "interested" and were also in a position to deter-[fol. 53] mine the background and character of those permitted to violate the law, must have had some legal power to put their plan into effect. We also think we are correct in surmising that the gangsters who had operated here in the past could reasonably be expected to return to such a lush and inviting field.

The County Solicitor and his assistants are the only persons who can prosecute the big gambling operators in Dade County. The County Solicitor was the only witness called who stated that he knew of no way to get evidence against these big gamblers. With the exception of one or two gam-

blers he was the only witness who doubted whether penitentiary sentences would have any deterring effect upon organized gambling. He was also the only witness who doubted that injunctions of gambling houses would have much effect. He was the only law enforcement officer who did not know that imposing light fines does not deter organized gambling. The County Solicitor should have such knowledge.

The Solicitor's only plan for improved enforcement is to employ two or three hundred additional police and investigators, the reasons given being that gambling law violations are the result of human nature and that a majority of merchants in this area want open gambling as a tourist attraction.

This same explanation was formerly made as an excuse for not enforcing the laws against prostitution, which until the army and navy moved in, was an extensive racket itself. It was then contended by the "liberal" advocates that prostitution was human nature; that people generally approved of protitution and that it was impossible to break it up. About three years ago the army and navy put on [fol. 54] the pressure and insisted that houses of prostitution be eliminated. The old practice of periodic raids and fines for revenue only was immediately discontinued. Under the army and navy inspired methods the offenders were brought into the court which could deal most fairly with them, and they were given sentences calculated to break up houses of prostitution. Prostitution, of course, has not been entirely eliminated, but these methods did quickly succeed in destroying houses of prostitution, and they are not now and have not for years been in general operation in this community. We now hear no more the lame excuses on this subject of prostitution which the County Solicitor still makes as to the gambling houses.

We referred above to the County Solicitor's explanations concerning the 55 cases he dismissed and filed no charges in. Perhaps a better idea of the Solicitor's reasons could be obtained by quoting his own words on a few of them. The Solicitor was asked why no information was filed in the cases of State vs. Harry Jordan, # 11241, and State vs. John A. Watson. He replied: "We don't have any file on that; we couldn't find one on John A. Watson. I called the Sheriff's office and asked them who made

the arrest." To the question as to why the case of State vs. Leon Huff, # 11850, was nolle prossed (dismissed) the Solicitor answered: "Who nolle prossed that, do you know? Does it show? I don't know. Anyhow, the testimony shows that the deputies went there and opened the door. He pulled the hasp from over the staple and turned the knob. Just as he started in someone else came out and he went in. Huff was sitting at a desk or table. Because of illegal entry and insufficient evidence, the only reason I [fol. 55] can see, is why it was nolle prossed, which I think is what happened."

The Solicitor was asked why the felony charge in the case of State vs. J. H. Keathley, #11020, was dismissed. His explanation was: "The only thing I can go on is presumptions, because apparently Costello (Court Reporter) had this thing confused; that Eavenson (Chief's Deputy Sheriff) got in, opened the door or got in some way; an illegal entry. He wanted to make a plea to gambling. We took it. That is the only explanation I could guess at, because I don't know. Hubbard investigated the case and made the announcement in court, I think."

In the latter part of this presentment one of our legislative recommendations is that the power of any prosecutor to dismiss a pending case should be curtailed, and he should be required to state the facts before the court fully, by written motion, and obtain the court's approval before dismissal is permitted.

The County Solicitor should vigorously prosecute cases when the evidence presented to him is sufficient, and if insufficient he should interest himself in further investigation. He should use the evidence he gets, and should try to get more, so as to file injunction suits against regular gambling houses which so frequently appear on the record of his cases. He should, by using the same methods that the State Attorney and the Grand Jury have, obtain evidence against some, at least, of the big gamblers and make an honest effort to send them to the penitentiary. Purely as a by-product of this investigation into conditions generally, the Grand Jury and the State Attorney have developed evidence against several of these well-known big gamblers and have returned indictments. If the County Solicitor had done his full duty in the past it would have [fol. 56] been unnecessary for much of this Grand Jury's work to have been done at all. We have not tried to do all of

this work for the Solicitor, but we have done enough to establish, conclusively, that by the same methods available to the County Solicitor the requisite information to proceed can be obtained. We expect him to finish the job, and we specifically point out that this is his job and not that of the State Attorney or of the Grand Jury.

The term "liberal policy" has been coined, locally, to give a nice name to a system of permitting violation of the laws for the profit (hugh profits) of those permitted to do so, and the political advantage, financial g-n, or both, to those who g-e the permission. This would not be tolerated in any community unless a considerable number of influential citizens are convinced that the "liberal policy" brings money into their pockets, and the public, generally, is unaware of the disastrous consequences, and therefore apathetic.

That the existence of this "policy" is entirely a matter of politics, and has nothing to do with the technical difficulties involved, is demonstrated by the fact that the "liberal policy" is followed in Miami, Miami Beach and Hialeah, but not is Coral Gables, Miami Shore, Miami Springs, Biscayne Park, and other small towns. For example, there is not even a slot machine in Miami Shores, although, from time to time, a few blocks away there have been gambling joints of all kinds. The gambling racket simply does not come into any community where the officials are opposed to it, because it cannot be profitably operated under these conditions.

[fol. 57] The very existence of an organized racket means political connivance with it. Obviously, no politician is going to connive—at least for long—unless the gamblers will finance his campaign and make his political life agreeable and pleasant, and even profitable, in return for his "liberality." Hones- men in the law enforcement field become understandably resentful and bitter under a system in which industry and competence mean nothing in the way of advancement. An ambitious but conscientious policeman sees all around him the rewards of clever politics while he gets nothing for the suspicion of the public, who do not understand the situation. Under these conditions it is difficult to get the right men to run for elective office or even to accept appointive ones. The wonder is that there are any so long as a practice exists when any

man concerned with law enforcement is suspected of dishonesty.

Surely we do not expect that men content to be put into office, or kept there, with the money and influence of the gambling racket, will be able to perform their duties efficiently, even as to matters having nothing to do with the rackets. Why should the public expect that a man who had so little respect for himself that he would permit the rackets to put him in office would have enough respect for his City to serve it efficiently and faithfully as to its streets, parks, hospitals, or the development of its harbors? A man unable to keep faith with himself cannot keep faith with his community.

Since the only publicly announced argument in favor of the "liberal policy" is that it brings business, it should be remembered that the rackets did not build this or any other community—they merely prey on a prosperity that capital [fol. 58] and labor have already created. There is no indication that a gambling racket built the railroads to Miami, cleared the swamps, constructed the causeways and the buildings, built the airports and depots. The racket, while by no means destroyed, has fared worse during the past six months than it has in years, yet this has caused no economic depression. While it is undoubtedly true that some tourists come here for the vice attractions offered, our own observation and experience tells us that this is not true as to the majority of them. They come to enjoy the climate, the beaches, the fishing and the other wholesome sports and forms of recreation. When we Dade Countians become visitors we flock to the mountains of the Carolinas in the summer which are not noted for gambling houses.

There is no way of knowing how many very desirable visitors and permanent residents we lose in exchange for those whom our rackets do attract. We have no way of knowing how many industrial plants we discourage from locating here. We do have some way of knowing a little of the economic loss of attracting the undesirables—the cost of the increase in crime of all kinds—the increased costs of public hospitals and welfare organizations, etc. And we can see that by the continued process of attracting more and more undesirables we might eventually acquire a national reputation which would cripple the wholesome future development of the ar- not only industrially and as a resort area.

Even if it were true that there is some economic gain from the racket this could not justify a complacent surrender of. [fol. 59] our community dignity and self-respect. This would not justify our constant fears for the moral safety of our children, nor could it justify us in accepting the sacrifice of the men and women in uniform to safeguard us, if we are incapable of preserving a wholesome, honest home for them to return to.

By all means, let us have a liberal community, liberal in its freedom from prejudice and bogotry, liberal in building and maintaining parks, play grounds, hospitals, decent housing, libraries, a great university, concert halls, and the like. Let us be liberal for constructive things. And let us forget this nonsense that to be liberal means to be licentious; to substitute degradation for honesty and civic decency.

We are convinced that a vast improvement in our local government, generally, as well as in law enforcement in particular, could be obtained and maintained if civic-minded individuals and organizations took an active and sustained interest in this subject. We do not mean some more passing of resolutions—we mean a thorough examination into carious phases of our local government so that its actual operations can be understood. We suggest that each civic group undertake to acquire first-hand information as to some particular part of our local government so that this information could be available not only to its own members but to other civic groups and the public at large through the cooperation of the news-papers. By a constant interchange of this kind, public information as to the conduct of its business would soon become well informed.

We believe that no civic activity will yield greater dividends for the community than this. We appreciate this fact because our service on this Grand Jury is the very process [fol. 60] that we are talking about. Groups of this kind, having acquired some definite knowledge and information, could then, where the conditions suggested it, bring their findings before the Grand Jury for further investigation and action.

Good public officials will not resent inquiries by civic groups, but on the contrary they will take this interest as a sign of encouragement that help from the public is forthcoming to rectify the abuses which exist.

We trust that the Grand Jury will be convened at each term of court and that it will continue the work we have

started of investigating the official conduct of law enforcement officers and such other officers as the public interest may require, and further to take more drastic action than this Grand Jury has. Since perhaps a general public indifference is somewhat to blame for the conditions we found we feel that we have taken the first step. We trust that more drastic action will not be necessary.

We particularly urge the next Grand Jury to investigate promptly if there is any considerable re-opening of old gambling houses or the opening of new ones. We note some indications that the gambling racketeers are proceeding with expensive preparations apparently on the assumption that those in authority are favorably inclined. As we have said before the rackets cannot operate openly without official approval. The very existence of a Grand Jury investigation prompts great uneasiness. We have found that several big gamblers we wanted to question have been in hiding to dodge summons.

In the course of this presentment we have already made a number of comments and recommendations which we trust [fol. 61] will be constructive. We also make some recommendations as to changes in our State laws, and urge the three representatives and the State Senator to give these recommendations their hearty support. These recommendations follow:

Legislative Recommendations

1. The present law under which no Grand Jury is convened unless the presiding Circuit Judge calls for a Grand Jury should be changed so that a Grand Jury is convened automatically at the beginning of each term of the Circuit court.

Comment. A Grand Jury, by accepting its opportunities to do constructive work, can perform a badly needed service to the County. Besides returning indictments it can and should furnish as "the people" checking up on the people's business. The convening of a Grand Jury should be as fixed as the opening of a term of Court or the holding of public elections. The power to prevent or postpone the exercise of this vital function should not reside in any person, even a Circuit Judge. There is nothing revolutionary in this recommendation. It was the law in this State until recently.

2. That, in addition to the present 18 man Grand Jury, provisions be made by law for the selection of three additional alternate Grand Jurors, to serve in the absence of regular Grand Jurors, much as alternate jurors serve on trial juries.

Comment. In the course of a lengthy term of Court extending over months, such as the present one, we have found considerable difficulty obtaining the required quorum at times due to the illness or unavoidable absence from the City of a few members from time to time. More flexibility as to membership will greatly increase the Grand Jury's investigative efficiency.

[fol. 62] 3. That by statute the right of a prosecution to enter a nolle prosequi (dismissal) of a criminal case pending be restricted so as to require him to file among the official records a written motion to the Court, stating fully all the facts upon which he bases his conclusion that the case be dismissed, the Court by order to find the facts stated to be true and concurring as to the sufficiency of the reasons stated, before the dismissal becomes effective.

Comments. The dismissals entered by the County Solicitor prompted thought on this question. Regardless of who the prosecutor is, however, it shocks us to think that a prosecutor should have the arbitrary power to dismiss a prosecution without assigning any reason whatever.

4. That the Charter of the City of Miami be amended so as to make the office of Municipal Judge elective for a four year term so that this official can afford to devote his full time to the work, to be free from any political interference from the City Commissioners, or threat of interference, and to have the dignity of office which the importance of its function warrants. His salary should be on a par with the Criminal Court Judges.

Comment. We have stated the reasons for this recommendation in the body of this report.

5. That the legislative joker contained in the licensing statute of 1941, Chapter 20956, which had the effect of substantially repealing the 1937 statute outlawing slot machines, be repealed, leaving the 1937 law in full force and effect so that the mere possession of a slot machine is unlawful.

Comment. The 1937 Act outlawing slot machines was an [fol. 63] effective piece of legislation enacted in response to an overwhelming public demand. The slot machine racket somehow managed to slip into a general licensing law in 1941, a trick sentence, by which these slot machines, with the name*d* changed to amusement machines, were licensed. The Courts then held that since the machines were licensed by the State, the Legislature could not have intended them to be unlawful. So all the work of the 1937 law was undone except that the machines pay off over the counter instead of automatically. Under the 1937 law it was a simple matter to drive out these vicious devices. We urge the legislative representatives to give this recommendation their utmost efforts.

6. That the statute concerning injunctions against public nuisances (hous*ing* of gambling and of prostitution) be strengthened so as to

(a) Provide that proof of the maint*ai*nance of a gambling or prostitution house is prima facie evidence that other business being conducted on the same premises is related to the maintenance of the gambling or prostitution house and subjecting the entire premises to injunction unless those persons concerned with or interested in the conduct of the businesses claimed to be legitimate overcome this presumption by showing that they have no interest in the illegal operations nor had any knowledge, actual or constructive, that such illegal operations were being conducted in the same premises.

(b) Violations of the laws regarding regulations of the sale of intoxicants in premises licensed for the sale of liquors be defined as a public nuisance and made [fol. 64] subject to the injunction statute.

(c) That all costs and expenses incurred in obtaining an injunction as a public nuisance, including all costs of investigation and attorneys' fees, whether incurred by the State, County or individual citizen, be taxed as costs against the defendants and the property enjoined.

(d) That the statute specifically give the State the right to a prompt appeal to the Supreme Court from any order of the Lower Court denying application for temporary injunction.

Comment. This recommendation is made on the basis of facts presented by the State Attorney and examples of actual injunction filed by him against gambling houses. The laws generally are all in favor of the criminals. We agree with the State Attorney that more consideration should be given to the protection of Society. There are entirely too many loopholes.

It seems sensible to us that if a man, in defiant disregard of the laws, maintains a public nuisance, he should certainly be made to pay all the costs of closing him up and the State or County should not have to carry the load.

We recommend that constituting liquor law violations public nuisances primarily to suggest an additional legal weapon against liquor places that habitually contribute to juvenile delinquency by employing minors or by selling liquor to juveniles and similar violations, etc. When the law can effectively close such places, the possible financial loss should promote greater vigilance on the part of the proprietors of bars and night clubs.

[fol. 65] 7. That the function of the State Attorney and the County Solicitor be consolidated in one office.

Comment. We think it is ridiculous to have both a County Solicitor and a State Attorney. This divided authority makes for confusion and inefficiency. The saving in money which could be effected by consolidation while considerable is the least important reason for eliminating this condition. There should be only one prosecutor in the State Courts, with such number of assistants as the work requires.

8. That a local bill be passed at the next session of the Legislature to remove any doubt as to the constitutionality of present laws by which the State Attorney employs his own investigator and has a fund for investigation, which bill should not require specific approval by the County Commissioners but should make the funds available on requisitions of the State Attorney, the purpose of the expenditure to be made fully known to the Grand Jury which shall audit the State Attorney's expense fund each time it convenes.

Comment. We have seen some of the handicaps the State Attorney labors under. In order to function properly he should not only be equipped to investigate the capital cases which his office prosecutes but he should be equipped to conduct investigations so as to unearth facts which should

be presented to the Grand Jury in its inquisitorial function. The funds should be available to him when needed without the necessity of going to the County Commissioners in advance of each expenditure. Proper check of these expenditures can be provided by the Grand Jury who should be in a better position than any other body to understand the necessity or lack of necessity of such expenditures. So [fol. 66] far as the dangers of misappropriating these funds is concerned, we have learned enough about the gambling racket to appreciate the fact that if a State Attorney wished to be dishonest he would not have to embezzle public funds.

9. That the business of furnishing horse racing information by the "wire service" already referred to be made a felony. In the alternative that, as a monopoly, it be subject to state regulations as are telephone companies.

Comment. This is in addition to the non-legislative recommendations included in the body of this report.

Acknowledgments of Appreciation

The Grand Jury has, with extremely few exceptions, found the public officers, who were called as witnesses, cooperated with the Grand Jury and were frankly helpful in their testimony. We were par-iculaarly impressed with the candor of virtually all of the Miami police officers who testified. We were also impressed with the candor of some of the elective officials examined, but as a whole they did not measure up in this respect to the testimony of the police officers.

We thank the County Commissioners for their cooperation in providing funds for the data on the cases handled by the County Solicitor. We are sorry to have to present them with bills for reporting and transcribing the testimony takin before the Grand Jury Committee, but the results we feel amply justifies all expense. This expense would have been considerably greater than it is had not the State Attorney's secretaries handled a good portion of this work.

We express our appreciation to Judge Paul D. Barns for [fol. 67] his guidance and counsel in the proper performance of our duties and for his courtesy and consideration.

We also express our appreciation to the State Attorney and his assistants and staff for their wholehearted cooperation and industry in assisting this Grand Jury to obtain the

facts before us. The State Attorney was extremely interested in the objectives of our investigation, but never attempted to exceed his function as counsel for the Grand Jury.

Finally, we acknowledge our indebtedness to some of our members who did much of the tediour spade work of our investigation and in the drafting of this presentment. These members were J. P. Murray, R. J. Hanna, Oliver Babbitt, J. E. Bandy and Robert T. Jones.

The latter three who served as the Grand Jury's Committee to assemble most of the testimony had a peculiarly burdemsome task, and unselfishly devoted weeks of their time to this work. The community, as well as their fellow members of this Grand Jury, owe them a debt of gratitude.

Respectfully submitted, Dade County Grand Jury, Spring Term 1944, by William P. Baird, Foreman.

J. E. Bandy, Clerk.

Dated: November 13, 1944.

[fol. 68] EXHIBIT "A" TO RETURN OF RESPONDENTS

In re: JOHN D. PENNEKAMP and THE MIAMI HERALD PUBLISHING CO.

AFFIDAVIT OF JOHN D. PENNEKAMP

STATE OF FLORIDA,
County of Dade:

John D. Pennekamp, having been duly sworn, upon his oath deposes and says:

That he is now and has been since 1941 associate editor of The Miami Herald; that from 1937 to 1941 he was managing editor of The Miami Herald; that as associate editor he has immediate and complete charge of the newspaper's editorial policies; that during the period from 1937 to 1941 as managing editor he had immediate and complete charge of the newspaper's news policies; that he is now familiar with the newspaper's news policies.

One of the objects of The Miami Herald is to bring to its readers the news of the world, local, state, national

and international, each day. The object of The Miami Herald in respect of its editorial policy is to comment on matters of vital importance to the residents of Miami and Dade County in particular and Florida in general each day. News is factual information concerning matters of public importance that in the judgment of the editor is of sufficient general interest to warrant its publication in the ne-spaper. Editorial comment is discussion of such matters from the analytical or critical viewpoint including the expression of opinion.

It is the policy of The Miami Herald to present the [fol. 69] news factually, objectively, accurately and fairly without regard to the editorial policies of the newspaper.

It is the editorial policy of The Miami Herald to comment in forthright language upon matters of general importance, to express opinion on local, state, national and international matters independent of any pressure group or political party or faith, to condemn practices which deserve condemnation, to support proper reforms and particularly in local matters to support proposals for the improvement of government in Miami and Dade County so as to make Miami a fit place in which decent people may enjoy living. The Miami Herald has no affiliances, political or otherwise, no axes to grind, no favor to seek, none to give, and no selfish purpose to serve. It regards what is good for Miami is good for it.

The Miami Herald by reason of its ownership is known as a Knight newspaper. Many years ago, the late C. L. Knight, father of the present editor and publisher of The Miami Herald proclaimed an editorial credo, which has been adopted by his son, and which I regard as basic to a declaration of The Miami Herald's editorial policy:

"We are ourselves Free—Free as the Constitution we enjoy—Free to truth, good manners and good sense. We shall be for whatever measure is best adapted to defending the rights and liberties of the people and advancing useful knowledge. We shall labor at all times to inspire the people with a just and proper sense of their condition, to point out to them their true interest and rouse them to pursue it."

Over a period of years and more particularly since 1937, The Miami Herald has vigorously campaigned for proper

[fol. 70] law enforcement. It has taken leadership in efforts to eliminate from places of authority or responsibility, officials who in its opinion had ceased to deserve public trust. It took the leadership in the establishment of the city managership form of local government upon a real managerial basis. It has carried on vigorous campaigns to elect and to have named law enforcement officers who would enforce; to remove those who would not.

The Miami Herald has consistently brought to its readers the news of proceedings in the various courts of Miami and Dade County as well as the Supreme Court of the State of Florida, the Federal Courts and the Supreme Court of the United States. The Miami Herald has consistently and frequently expressed its opinion upon the decisions of these courts and the proceedings therein consistent with its policy of bringing to its readers the news of such proceedings and conveying to those readers its opinions thereon and all to the end that a better informed public opinion would aid and assist the administration of justice in our various courts. For many years it has been a generally accepted fact that criminal procedure in Florida is archaic; that under the laws of the State those charged with crime are enabled to avail themselves of delay and technicality so as to postpone and in many cases avoid the consequences of their acts. The Miami Herald has consistently advocated a reform in judicial procedure, the elimination of these archaic rules and technicalities in order that those charged with crime may have their day in court and that those charging them with crime may prosecute while witnesses are alive or before the facts may be forgotten. As an illustration of its interest in this matter [fol. 71] The Miami Herald published a large part of the recent report of the grand jury to the Circuit Court on law enforcement, particularly those comments of the grand jury on the breakdown of law enforcement against gambling.

Deponent further deposes and says that the editorials complained of in the citation issued on November 10, 1944 were written and published in accordance with The Miami Herald's well known, long standing and openly recognized policy of calling to the attention of its readers matters of public importance concerning which it thinks they should

be informed not only as to the facts but as to its opinion on those facts.

This affidavit is made for use in the above entitled case.

John D. Pennekamp.

Sworn to and subscribed before me this 27th day of November, A. D. 1944. Thelma Cain Warncke, Notary Public, State of Florida at Large. My Commission expires: 4-2-46. (Notary Public Seal.)

[fol. 72] EXHIBIT "B" TO RETURN OF RESPONDENTS

In Re: JOHN D. PENNEKAMP and THE MIAMI HERALD PUBLISHING CO.

AFFIDAVIT OF JEANNE BELLAMY BILLS

STATE OF FLORIDA,
County of Dade, ss.:

Jeanne Bellamy Bills, having been duly sworn, upon her oath deposes and says:

That she is and for a period of approximately seven years, has been a reporter on the news staff of The Miami Herald; that during that period of time she has covered many stories at the courthouse; that as a part of her employment as a reporter on the staff of The Miami Herald she has followed the proceedings instituted in this Court against the Brook Club and its owners and is familiar with the developments in those proceedings; that she has also checked the records of the court in respect of the rape cases mentioned in the citation directed to John D. Pennekamp and The Miami Herald Publishing Company under date of November 10, 1944; that she has also checked the records of the Court in respect of the proceedings in the so-called Teepee Club case mentioned in said citation. During the entire period of her employment by The Miami Herald it has been the policy of The Miami Herald to cover all such matters objectively, factually, and fairly from a news viewpoint, to obtain the background of such cases and to present all facts to the readers of The Miami Herald in order that those readers may be fully informed upon matters of general public importance.

[fol. 73] In co-operation with C. G. Berning of The Miami Herald staff she obtained a copy of the report of the grand jury to the judges of the Circuit Court of the eleventh judicial circuit of Florida in and for the County of Dade, handed to those judges on or about November 13, 1944, in which report the grand jury made a specific report on its gambling investigations in Dade County, Florida, wherein the grand jury itself said:

> "The general purpose of the report is to indict a system of law enforcement of the gambling laws, called the liberal policy. We have tried to show what this policy is, and its consequences. We have made several concrete recommendations, but fundamentally what we are driving at is to make the situation clear in the hope that an informed public opinion, which is the only possible basis for good government, will exert the pressure necessary to bring lasting improvement."

That as a part of its services to its readers the Miami Herald published stories at great length telling what the grand jury said in that report. These stories occupied many columns of space in The Miami Herald of November 14, 1944.

Deponent says that she examined, as part of her work as a reporter, the records of the former case (referred to in the Brook Club pleadings in Case No. 84054) against the Brook Club, in which the State, on the relation of George Couper Gibbs, then Attorney General, T. J. Ellis and L. [fol. 74] A. Truett, Assistant Attorneys General, G. A. Worley, State Attorney, Joseph A. Otto, Assistant State Attorney, and Robert R. Taylor, County Solicitor, filed a bill of complaint, being case No. 61247 to abate an operation of a gambling house known as the Brook Club. This case was positively identical as to defendants, place involved and location of nuisance, as in the recent case No. 84054 and both were filed in the Circuit Court of Dade County. To the bill in the earlier case were attached affidavits of two FBI agents supporting the allegations of the bill and stating that the information was furnished to the Attorney General of Florida upon the request to the FBI Director. Upon the date fixed for the State's application for temporary injunction in Case No. 61247, February 27, 1940, the defendants' counsel (one of whom, Vin-

cent C. Giblin, also represented said defendants in the subsequent Brook Club case) filed an answer under oath wherein among other things defendants said:

"This defendant, answering the allegations of paragraph 3 of the said bill, admits that during a part of the current winter season prior to the institution of this suit certain lessees and tenants of this defendant occupied and used a certain portion of the said building for the purpose of conducting and operating therein unlawful games of chance and that in such portions of such building gambling implements, de- [fol. 75] vices and apparatus were installed and used for illegal gaming purposes by such lessees and tenants. This defendant cannot truthfully disclaim or deny knowledge by it of the facts herein admitted. On the contrary, this defendant, believing that, because of the apathy or sympathy of the local community in which its club is situated and of Dade County generally, that statutes prohibiting gaming would not be strictly enforced by officers of the law, encouraged and co-operated with the operators of the gambling room in the said building. This defendant especially believed that a place, located at its club is and conducted on the high plane that such club has been conducted, would not be molested by law enforcement officers even if it should be generally known that unlawful games of chance should be permitted and encouraged in such place. This defendant's club is not in a populous neighborhood. No private person has made complaint of any injury sustained or likely to be sustained by himself or his property by reason of this defendant's permitting gambling on its premises. No criminal proceedings had been instituted, prior to the filing of the bill of complaint herein, against [fol. 76] anyone who has conducted or participated in games of chance in this defendant's club. This defendant, in the operation of its business, adopted and has employed the "club" plan for the purpose of enabling it to exclude from its restaurant and bar and its other facilities undesirable and objectionable persons; and, as a result of the adoption and use of such plan, its patrons and guests have been and are only persons of good repute. This defendant believed, at

the time it consented to and encouraged the use of a portion of its premises for gaming purposes, that it was supplying the demand of a large majority of the inhabitants of the community for well conducted and regulated gambling restricted to persons who could afford and wished, as a pleasurable diversion in the nation's winter playground, to engage in the playing of roulette and other games of chance. This defendant, however, became thoroughly convinced, prior to the institution of this suit, that the Sheriff of Dade County, Florida, and his deputies would no longer tolerate or permit illegal gaming on this defendant's premises or elsewhere in Dade County. This De- [fol. 77] fendant immediately caused its lessees and tenants to discontinue and abandon their gambling operations. Prior to the institution of this suit this defendant had voluntarily and in good faith permanently abated the nuisance of which the relators complain in the bill of complaint filed herein. The cessation of the unlawful practices which it had theretofore permitted is not a mere temporary cessation. This defendant does not intend to and will not permit a revival or renewal of such practices. The voluntary abatement by it of the nuisance complained of herein is bona fide and permanent."

On this same date, February 27, 1940, Judge Paul D. Barns entered an order, reciting the gist of defendants' answer, denying the temporary injunction, staying the proceedings indefinitely with right of the State to renew its applications for injunctions if the defendants resumed operation of the nuisance complained of. No further proceedings were had in this case until April 28, 1941 when Tom Watson, who had succeeded George Couper Gibbs as Attorney General, moved to withdraw the name of the Attorney General as a relator, stating that he believed the Attorney General should keep himself "free from interference in matters pertaining to local, county and city government where the local officials exist for the carrying on and execution thereof and have not been shown to have [fol. 78] failed in the performance of their duties." In addition to withdrawing as a relator, J. Tom Watson, as Attorney General, suggested the "court should make such further order in disposition of the case as to it may seem

appropriate and proper." No motion was filed by the other relators, including the State Attorney and the County Solicitor to withdraw their names as relators from the bill of complaint. On May 12, 1941, Judge Paul D. Barns entered an order reciting that the motion of Mr. Watson Attorney General, requested "permission of the Court to withdraw the State of Florida and the Attorney General as plaintiffs, at which hearing Hon. George A. Worley was present" and relating further that "in litigation it is necessary to have a plaintiff and defendant, and the plaintiff not desiring to proceed further and having withdrawn" ordered that the motion be granted and the cause dismissed.

On March 22, 1944 the second Brook Club case commenced with the filing of a bill of complaint, Chancery Case No. 84054 A. This case was entitled State ex rel. Stanley Milledge v. Brook Club, Inc., Harry McLeod and William Maher, as operators of Brook Club. The bill of complaint was for an injunction to abate a nuisance, for operating a gambling house. Under the blind filing system established by the Circuit Court rules this case fell into the division "A" Paul D. Barns, judge. Later it was heard by Judge George E. Holt, who granted a temporary injunction after hearing witnesses and it was finally disposed of when Judge Marshall C. Wiseheart signed the final decree dismissing the bill of complaint on October 31, 1944.

In the bill of complaint in the second Brook Club case [fol. 79] State Attorney Milledge alleged that the promises of the defendants made in the first Brook Club Case No. 61247 about stopping gambling were "utterly worthless and unreliable * * * and show that the said defendants have a disregard for the courts of this State as well as for the law enforcement officials of Dade County."

The defendants filed a motion to dismiss the bill on the ground that no necessity for injunction could exist unless law enforcement officials had failed in their duty, which upon being denied by Judge Holt, was appealed to the Supreme Court, Judge Holt staying the proceedings to give the defendants time to do this. Various postponements were had and it was April 20, 1944 when the State Attorney presented witnesses before Judge Holt in the presence of defendant's counsel, upon which evidence Judge Holt entered a temporary injunction on April 25, 1944, reciting

that "having considered the evidence submitted by the plaintiff, none having been offered by the defendants hereinafter named". The original notice of the State called for a hearing on March 28, 1944.

On May 1, 1944, the defendants filed their answer admitting the operating of a gambling room at the Brook Club on two widely separated dates," one of which was March 18, 1944. They denies that the Brook Club constituted a public nuisance.

On August 14, 1944, the defendants filed a motion for final decree on the pleadings and on October 24th, served notice on the State Attorney of a hearing on the motion before Judge Wiseheart on October 31, 1944.

[fol. 80] On October 31, 1944, Judge Wiseheart entered a final decree dismissing the bill of complaint.

Further, upon her oath, deponent says that she investigated the history of the rape cases mentioned in the citation issued under date of November 10, 1944. These were cases Nos. 847, 850, 855 and 856, in which five cases eight defendants were named. In each case an indictment was returned by the grand jury on October 21, 1944. The minutes of the Circuit Court show that at a session of that Court held at 2:00 P. M. October 30, 1944, Judge Paul D. Barns presiding, counsel for defendants in No. 856 presented a motion to quash the indictment, which was granted by the Court. The Court then ordered the above case "passed for resetting" and further ordered the defendants remanded to the custody of the sheriff. The Court minutes of October 30, 1944, also show that the Court ordered the indictments quashed as to the defendants in Nos. 847, 850, 851 and 855. The Court minutes for October 31, 1944, show that the grand jury entered at 2:00 P. M. with indictments for one Delmer Butler and for the identical defendants indicted on October 21, 1944, in the five rape cases wherein the indictments were quashed on October 30, 1944.

Deponent further upon her oath deposes and says that she has studied the record of the Teepee Club case, Chancery No. 87365 E, entitled State ex rel Stanley Milledge as State Attorney vs. Joseph W. Lipop and Oscar H. Morris as owners of the real estate of 5722 Southwest 8th Street, Miami, Florida, the Teepee Club. The action was

in the nature of a bill of injunction to abate a nuisance [fol. 81] for operating a gambling house (bookmaking). Under the blind filing system established by the Circuit Court rules this suit fell into Division "E" Judge Marshall C. Wiseheart; that the bill of complaint was filed on September 23, 1944; that notice of hearing on September 29, 1944 before Judge George E. Holt was issued; that the sheriff's return showed Lipop was served but Morris unserved; that on September 25, 1944, State Attorney Milledge mailed the defendant's notice of hearing for October 2, 1944 before Judge Holt on request for a temporary injunction; that on October 9, 1944 the defendant Lipop filed a statement that Morris was inducted into the Army on May 10, 1942, and that he, Lipop, denied all charges on behalf of Morris, which statement was filed by attorneys for Lipop; that on October 11, 1944 State Attorney Milledge filed transcripts of statements under oath and pursuant to subpoena taken in his office on September 21, 1944 of six men who were in the place when deputy sheriffs Burke and Hughes entered on September 18, 1944 and took the names and addresses of nineteen persons then there. State Attorney Milledge filed a certificate with each statement that the witnesses had been subpoenaed and sworn by him. At said hearing the State Attorney offered the statements under oath. (All but one statement was signed by the witnesses.) The attorneys for defendants filed motions to dismiss the bill and suppress the testimony obtained through the actions of deputy sheriffs Burke and Hughes, alleging that Burke obtained admittance improperly and without a valid search warrant, that the evidence was obtained by illegal search and seizure; that on October 10, 1944 Judge Holt signed an order accompanied by an opin- [fol. 82] ion denying the application for a temporary injunction and in his opinion he stated that the five affidavits introduced by the State Attorney over defense objections "go more into detail than the 'live' witnesses before the Court but can not be considered"; that on October 11, 1944 State Attorney Milledge filed a motion to set aside the motion denying the temporary injunction and renewing his motion for a temporary injunction in which motion he cited a statutory authorization for use of affidavits to support the issuance of a temporary injunction pending final hear-

ing; that on October 12, 1944, Judge Holt denied the motion for rehearing.

This affidavit is made for use in the above entitled cause.

Jeanne Bellamy Bills.

Sworn to and subscribed before me this 27th day of November, A. D. 1944. Thelma Cain Warncke, Notary Public, State of Florida at Large. My Commission expires: 4-2-46. (Notary Public Seal.)

[fol. 83] In the Circuit Court in and for Dade County

Excerpts from Transcript of Testimony—Filed December 6, 1944

Colloquy Between Court and Counsel

Judge Barns: Gentlemen, before this matter gets under way, we wish to make a statement for your consideration. The respondents here have been brought to answer a charge that they made an unfair statement concerning the proceedings in court, and in turn have based criticism upon an unfair, untrue statement. It was considered not a full report, nor a fair report. You have been cited here by Judges Wisehcart and Barns. We believe in the freedom of the press; we believe in freedom of speech, and we believe in the writ of habeas corpus. We know of nothing in our Constitution that is more important to be preserved than those things—those three things—and we believe in a fair trial. It may be that the respondents here are of the opinion and believe that they would receive a better trial, a more fair trial, from some other judge than Judges Wiseheart and Barns, and under those circumstances we are ready to retire and assign the case to another judge. We have available three other judges, any one of whom I think would give you a fair trial. We would like to have you express your wishes in the matter. Whatever you do will be fully understood and we can well understand that you might think that you would get a better trial from some other judges.

Mr. Milam: May your Honors please, the respondents are cited here, as the Court has indicated, on a most grievous and serious charge.

[fol. 84] Judge Barns: Yes.

Mr. Milam: We are here to respond to that charge and to show why these respondents are not in contempt of court. We have no suggestion whatever to make as to the constitution of the court and as to who shall sit upon the trial of this case—none at all.

Judge Barns: Yes. Do I understand you, Mr. Milam, to say that your issue is that you made the publication, but it was not an offense?

Mr. Milam: Yes, we made the publication of these two editorials.

Judge Barns: And it was not an offense?

Mr. Milam: Our answer will trace that out entirely.

Judge Barns: Yes. Under the circumstances, you feeling as you do, we will proceed with the trial, and we appreciate the attitude that you have concerning the matter. It is quite a compliment to us; we feel that you consider that you will get a fair trial and we will do our best to see that your faith is not in vain.

* * * * * * *

Judge Barns: Mr. Hanson, if you don't mind, I would like to ask you a question or two.

Mr. Hanson: Yes, sir.

Judge Barns: The Court has been very much impressed with your argument, and we know that you have given the matter a great deal of thought and consideration, but with the giving of the press the freedom that you have, you have not mentioned how much of a restraint should be put on that press with its freedom. What would be the—first, I [fol. 85] don't want you to assume that this applies to your client in answering my question, but just thinking about it academically, what do you think would be the limit of the libel of the Court concerning court actions? I am not thinking about the right of the Judge to sue for damages; I am inquiring about what do you think——

Mr. Hanson: Whether the court could sue?

Judge Barns: No, no. What do you think would be the remedy? It is for you to answer, and not me, if you have an answer; I don't know.

Mr. Hanson: The answer, sir, is that from Chief Justice Hughes comment in the Near vs. Minnesota case, where he said that these forms of restraint such as injunctions, suppressing publication, or punishment of constructive contempt—we will write this into his opinion, but I mean as

applied overall—were in effect restraints on the expression of opinion and dissemination of information; that the proper rule is the rule of subsequent punishment. Now, that was extended also by Mr. Justice Douglas in the Nye case, where he said that you can not effect a restraint through a contempt proceeding, but that if it is an illegal act, then it should be punished as an illegal act. Now, I am frank to say that under the libel laws of the country, newspapers have been sued by judges in their individual capacity.

Judge Barns: I am not concerned with him; I am concerned with the Court.

Mr. Hanson: That is all. I am concerned with in this. What the Supreme Court has said—and I answered that because, as referred to by my brother Carson, you are asking the question now—is that the common law on the con- [fol. 86] tempt power did not pass to the judges of the United States, and they said that in the Times-Mirror case.

Now, maybe we are left without a remedy, if a remedy be needed by the courts in these cases of constructive contempt, which over a period of 150 years they have construed as being within their power, because under the latest doctrine of the Supreme Court, as I see it, if a judge is annoyed by, or feels that he is injured by, or that his court is injured by comment, he can not do anything about it unless the danger to the fair and impartial administration of justice by him or by his court is extremely close to him, in the courtroom, or manifested with such a high degree of imminence as to express a high degree of threat.

Now, I can give you some instances of that. This morning—and I think the photographer obtained the permission of the Court—pictures were taken in the courtroom. Well, it is an absolute rule under the clear and present danger theory, and it is now the clear and present danger rule that no photographer, no person, can do anything in the courtroom of that nature that interferes with the proceedings either before the court sits down, when the court is there—the judge comes in in that hall—until he has departed, without his consent, or in his courtroom during his absence, without his consent, of that nature. Now, we had a court case of that kind in Ardmore, in my home State, where a very notorious murderer was being tried. There had been an instance in some court somewhere, which Judge Edone(?) notes, there had been a flashlight picture, and

[fol. 87] the prisoner tried to escape, so he ordered no pictures taken there. The photographer on a Baltimore paper went in with a candid camera, which was not visible to the court or any attendants of the Court, and he took pictures, and was fine- $5,000, and the one responsible for sending the photographer in was fined, and I think a jail sentence.

Now, that is contempt under the clear and present danger theory.

Now, if the Miami Herald would say anything about this Court, or if anybody would say anything about the Court, and then put its boys down here to hawk that criticism in the presence of the court, so that these people who are coming in and out of the court and doing business with the court, where they would be affected, I would think that would be contemptuous; but I do say, just as you are free to say anything you want about the Miami Herald, and that the Miami Herald has to take it unless they want to sue you for libel in its individual capacity, that under this doctrine a newspaper can go to the extreme of saying what it wants to say about judicial proceedings, and I regret to say that when it is given that right, it is also given the right of being unfair if it wants to be, but I don't know of any newspaper that wants to be unfair.

Judge Barns: You say it has the right to lie about it?

Mr. Hanson: Yes; and if it lies about the court, the individual judge who is lied about has the right of suing for libel.

Judge Barns: That is the Judge's right.

Mr. Hanson: That the newspaper has or that the editor of the newspaper has to sue him for libel. But I mean [fol. 88] that is the extreme of that, because, as was said by the Chief Justice in the Near case, and has been repeated, there are so few instances of these wrongful acts on the part of newspapers that it is better to preserve the general overall right than it is to try to cure the isolated evils by destroying the freedom of the press.

Judge Barns: You mean it has a right to lie about the court unless the lie is published under such circumstances as to present a clear and present danger of interfering with the machinery of the Court?

Mr. Hanson: Let us say it has a right to lie, or has the right to tell the truth, and it does not make any difference whether it is a lie or the truth, if it interferes—presents a clear and present danger.

Judge Barns: Even to tell the truth?

Mr. Hanson: Even to tell the truth.

Judge Barns: At times.

Mr. Hanson: If it is told in such a way as to present a clear and present danger to the administration of justice would subject it to the penalty of justice, just as much as tell an untruth.

Judge Barns: Do you contend that the freedom of the press carries with it the right to lie?

Mr. Hanson: The courts have so held, and they could hold no other thing if you can have the freedom of speech and freedom of press; it does carry the right to lie, and then the courts have said the one who is lied about has his remedy in some form of subsequent punishment rather than through some form of restraint.

[fol. 89] Judge Barns: But that is the individual right that you are talking about.

Mr. Hanson: That is the individual right that I am talking about, and it has also been held to be the right in the case recently upheld by the Court of Appeals in New York in the case of a labor union.

Judge Barns: But speaking of the court as an institution, you have a right to lie about it without there being any punishment, wouldn't you, under that?

Mr. Hanson: Just the same as you have the right to tell the truth about it without any punishment, if the truth hurt.

Judge Barns: Well, the truth, as a rule, does not hurt.

Mr. Hanson: It hurt Judge Manton in New York, when the Scripps-Howard put him in the penitentiary. It hurt Judge English out in Illinois. He retired from the bench to escape conviction.

Judge Barns: Of course there the truth ought to have been told, but no one's mouth is closed to tell the truth about a court.

Mr. Hanson: And there is no legal definition, your Honor, as to what is the truth. Even the legislatures have seldom defined "truth."

Judge Barns: But the people know.

Mr. Hanson: That is right.

Judge Barns: As a rule the closing of the mouths of the press to tell the truth is only when it was frustrated in carrying out the court's writ, is it not?

Mr. Hanson: What is that?

Judge Barns: As a rule the mouth of the press is never [fol. 90] closed to tell the truth except when if they tell the truth it would frustrate or affect the rights of some individual litigant.

Mr. Hanson: Oh, no. Now, your Honor, you are dealing with contempt. Now we have a voluntary censorship where the press is closed on matters pertaining to national defense that might give some help to the enemy.

Judge Barns: We are talking about the truth concerning courts.

Mr. Hanson: Let us talk about expressions concerning courts, because the truth is a matter of viewpoint. The Herald may think that what it said about a proceeding in this court was factual from the records it got, and the comment was fair; and the courts, from its knowledge, may take exactly the opposite view. So that is a matter of viewpoint, but in the long run truth in such matters is what the public believes in the light of the information that it gets from both sides.

Judge Barns: Both sides?

Mr. Hanson: Yes. And this court has issued a citation, and that fact has been published, and these proceedings will be published, and the public will get the information concerning these proceedings, and whatever the judgment of this Court may be, the public will be informed as to the judgment, as to the reasons for it, and if the judgment be against the Herald and the matter is appealed, the public will continue to be informed until the court of last resort determines the issue, and whatever the determination is the public will be informed, and then eventually the public will make up its mind as to what the truth is.

[fol. 91] Judge Barnes: That is right, naturally, I am going to ask you another question. You have said here in this case that you were in the Los Angeles case. How long did it take to try the Los Angeles case?

Mr. Hanson: The Los Angeles case did not take long.

Judge Barns: How long?

Mr. Hanson: I think—I was not in Los Angeles at the time of the actual trial, but I think it was less than two days.

Judge Barns: And did they review the record of that in two days?

Mr. Hanson: Oh, now, wait a minute. They did not review the record of the paper in two days. The Bar Association of Los Angeles named a committee which got the files of the Los Angeles Times. They took the files for six months; the committee studied every editorial printed in the Los Angeles Times for a period of six months; it selected five editorials and it presented those editorials to the court, with an affidavit by J. Louis ——, Secretary of the Committee, stating to the committee that these editorials were contemptuous. The citation was issued. The Los Angeles Times moved to dismiss, supported the motion by affidavit. There was a brief hearing on the motion; it was denied. They went into the hearing, and they had witnesses in which they had, as I recall, the two Chandlers and Mr. Hodgkiss, as to why the editorials were written, all from their record.

Judge Barns: And you were there?

Mr. Hanson: I was at the argument in the Supreme Court of the United States, and I filed briefs in it all the way through in Los Angeles, but was not in the Superior Court of Los Angeles or in the Supreme Court of California.

[fol. 92] Judge Barns: Not in the court where it was tried?

Mr. Hanson: No, sir.

Judge Barns: Thank you very much.

Mr. Milam: Are the friends of the court finished?

Judge Barns: Are you finished?

Mr. Carson: I had one or two remarks.

Judge Barns: Now?

Mr. Carson: Yes—anytime.

Judge Barns: You better make them now.

Mr. Carson: I merely want to say that the issue is—that if the freedom of the press includes the right to lie about the courts, then I think I shall have to apologize.

Mr. Milam: If your Honor please, I want to bring the case back to what seems to me to be the issue. I have made considerable notes, but I think that it is unnecessary, in view of the court's recent discussion. The facts in these several cases involved here have been brought out at great length, and I will not labor the Court further with them. I don't very much like—if it makes any difference—I do, however, say I don't think the imputation is fair that there has been any lying in this case.

Judge Barns: Did you understand my question in the beginning? I prefaced it with the remark that the answer would not have any reference to these respondents.

Mr. Milam: I concede that, but I want to get it on a little different note before you close here.

Judge Barns: Yes.

Mr. Milam: The record in the Teepee case and the Brook Club case is now before the Court, of which it will take judicial notice, but it justified a far stronger editorial, [fol. 93] I submit, than was published here. The editorial mentioned three cases, but dealt in generalities. The petition for rehearing in the Teepee case had many grounds that could have been stressed. The newspaper gave what it considered to be a fair and impartial account.

Now, talking of a suggestion, there was no suggestion that there was any intentional departure from the truth. If there were, it had been denied specifically in the response herein.

Judge Barns: I beg your pardon. Read that statement, please.

Mr. Milam: I will repeat it, sir, if I may. There was no intent in this case to wilfully misrepresent any fact, or, as Mr. Mershon said, to falsely quote the records of this Court. We submit that there was no such thing. We submit that the actual records of the court could have justified even stronger statements than were made here.

Now I want to bring it back to the whole issue that was made, and that seems to so strongly impress the Court. This citation was drawn upon the reasonable tendency rule; it tends to obstruct justice; it tends to go forth. We were not charged with creating a clear and present evil and a subsequent evil, and a gri-veous one, the imminence of which was very high. I respectfully submit to the Court that that is the true rule.

Something has been mentioned about the common law, but the fifth headnote in the Los Angeles Times case says: (Reads headnote.) That should foreclose any question about that. We get back then to the clear and present danger. I ask your Honors, both of you sitting on the bench, would the comment that was made in this editorial about rape cases and their re-indictment in the slightest degree [fol. 94] prejudice either of your Honors or obstruct you in giving fair trials to the defendants in those cases?

Let me propound the further question: Did the comment on the Book Club case, which *which* has been completely finished and dismissed and is a past matter, could it create in the minds of either of the judges sitting here a clear and present danager of a substantive evil that would be imposed against the defendant?

Let me get to the Teepee Club case. Could what was said about striking affidavits for use upon application for temporary injunction create a clear and present danger, and that imminence was great of that grievous danger that this court could not fairly decide upon the permanent injunction, which is the only issue involved in the case.

Frankly, I don't ever want Circuit Courts of this State, nor the judges, we will say, lacking in the firmness, resolution and character, but impervious to flattery, criticism or anything else which could in the slightest degree create any present or clear danger, and we submit it on that.

Judge Barns: Mr. Milam, may I ask you a question?

Mr. Milam: Yes, indeed.

Judge Barns: Would that not then resolve itself into a question of whether or not the act of the paper, measuring the act of the paper as against the strength of character and stability of the judge—of the particular judge involved?

Mr. Milam: Not at all; not at all. If your Honor please, the protection of the court rests in its actions over a long time, and its fair decisions, and nothing in the world can wreck a newspaper so fast as unfair and unauthorized and [fol. 95] unwarranted criticism of the courts. The public will take care of that. It does not create, if I understand your question——

Judge Barns: I am afraid I have not made myself clear. If the clear and present danger rule is to be applied, as you suggest, would it not be then to measure the act of the paper as against the strength of character or stability of the judge discussed? In other words, are we to hold—a strong judge can yield more than a thin-skinned judge, and you would never know whether the danger was clear and present until you first found out about the stability of the judge involved.

Mr. Milam: As an officer of this Court I will answer that I don't think any judge of this Court is lacking in fortitude and character as mentioned by the Supreme Court.

Judge Barns: Is that to be the test of the paper's act? Even assuming—for the purpose of illustration, is our character to be the test of whether or not your client is in contempt?

Mr. Milam: Not at all. As said in the Earman case, we must assume that the judges are of reasonable firmness of character, fortitude and resolution. The Herald refused to state that the judges of the Circuit Court here or elsewhere in the State lacked any of them.

Judge Barns: Allright. Thank you very much.

* * * * * * * *

[fol. 96] Reporter's Certificate to foregoing tranciript omitted in printing.

[fols. 97-98] DEFENDANT'S EXHIBIT "A"

TRANSCRIPT OF RECORD FROM THE CIRCUIT COURT IN AND FOR THE COUNTY OF DADE, STATE OF FLORIDA IN CASE OF STATE OF FLORIDA, EX REL. STANLEY MILLEDGE, AS STATE ATTORNEY FOR THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, PLAINTIFF, V. JOSEPH W. LIPOP AND OSCAR H. MORRIS, DEFENDANTS.

Nov. 28, 1944.

E. B. Leatherman, Clerk of the Circuit Court.

CHANCERY No. 87265-E

STATE OF FLORIDA, ex rel.: STANLEY MILLEDGE, as State Attorney for the Eleventh Judicial Circuit of Florida, Plaintiff,

vs.

JOSEPH W. LIPOP and OSCAR H. MORRIS, Defendants

[fol. 99] On September 23rd, A. D. 1944 Bill of Complaint was filed in the words and figures, to wit:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY

No. 87365 E

STATE OF FLORIDA, ex rel.: STANLEY MILLEDGE, as State Attorney for the Eleventh Judicial Circuit of Florida, Plaintiff,

vs.

JOSEPH W. LIPOP and OSCAR H. MORRIS, Defendants

INJUNCTION TO ABATE NUISANCE

The State of Florida, by Stanley Milledge, State Attorney in and for the Eleventh Judicial Circuit of Florida, as Relator, brings this bill of complaint against Joseph W. Lipop and Oscar H. Morris, both residents of Dade County, Florida, and thereupon complaining said Relator informs the Court and alleges as follows:

1

That the defendants keep and maintain, and for some time past have kept and maintained, in Dade County, Florida, a well known public nuisance, as defined in Section 823.05, Florida Statutes 1941, and in violation thereof, known as the "Teepee Club", which consists of a building on the land hereinafter described in which is maintained divers equipment and apparatus for engaging in unlawful games of chance, and where various unlawful games of chance are [fol. 100] engaged in for money in violation of the laws of Florida, and taking of wages upon the results of horse races.

2

Said building is situated upon land in Dade County, Florida, known as "5722 S. W. 8th Street", more particularly described as follows:

"North 100′ of West 100′ of East 200′, of Tract 1, Sylvania Heights, according to the corrected Plat of the revised and amended Plat by Sylvania Heights, recorded in Plat Book 28, at page 62, Public Records of Dade County, Florida."

Said building, which has only the ground floor, contains a bar, a dining room, kitchen, lavatories, and on the South side of the dining room a room constructed for the purpose of maintaining a gambling room, and used for that purpose; betting and wagering on the results of horse races is conducted; that there are employees to sell tickets to patrons on horses of their selection about to run in races at race tracks outside of Florida, other employees to cash the winning tickets according to the results of horse races as they are announced over a loud speaker in said premises and are posted on the wall by an employee. The said establishment is a known gambling house, and is patronized by persons who live in various sections of Dade County, Florida; that recently, to-wit, on September 18, 1944, there were [fol. 101] many persons, to-wit, 25 to 30, many if not all of whom are engaged in wagering on horses in said building.

4

The said premises are open to the public and are frequented by members of the public, although an employee is kept posted at the door to the said gambling room, but this device is not employed as a restraint upon the members of the public who wish to enter the gambling room in said building.

5

According to the public records of Dade County, Florida, the defendants, Joseph W. Lipop and Oscar H. Morris, are the record owners of the above described real estate, and all of said premises is occupied and controlled by said defendants with the exception of that portion of the building on the West and thereof, separated by a wall or petition and occupied as a beauty salon known as the "Teepee Beauty Salon", located at 5728 S. W. 8th Street, and as a barber shop known as the "Teepee Barber Shop", located at 5726 S. W. 8th Street, and as to this portion of the building no injunction is sought. The business of the defendants, owned, operated and controlled by them, consists of the operation of a bar, the selling of good-, and the operation of a gambling room; that all portions of said business are interrelated and is so operated as to constitute a public nuisance as defined by law.

6

Unless restrained the said defendants will continue to operate and conduct the said premises in the manner aforesaid in open disregard, violation and defiance of the laws of [fol. 102] Florida in wilful contempt and disregard of and to the injury and corruption of the public morals and decency of Dade County and the State of Florida, and will continue to maintain a public nuisance as hereinabove described.

7

Wherefore, it is respectfully prayed on behalf of the State of Florida that the Court temporarily restrain and enjoin the defendants, their agents, servants, and employees from conducting, maintaining or operating or from permitting to be maintained, conducted or operated each and every of said unlawful games of chance or any unlawful games of chance on said premises, and from maintaining on or near the same any equipment or apparatus designed and intended for use in unlawful gambling; that the defendants until further order of this Court be enjoined from using or permitting said premises to be used for any purpose whatsoever, and that upon final hearing said injunction be made permanent and perpetual, and that the defendants be required to pay the costs of this suit, and that a lien therefor be decreed in favor of the State upon the property and fixtures in said premises or upon said real estate and building.

Stanley Milledge, as State Attorney in and for the Eleventh Judicial Circuit of Florida.

On September 25, A. D. 1944 Notice of Hearing on Application for Temporary Restraining Order was filed in words and figures as follows, to-wit:

[Caption omitted]

[fol. 103] NOTICE OF HEARING ON APPLICATION FOR TEMPORARY RESTRAINING ORDER

To: Joseph W. Lipop, 825 Almeria Avenue, Coral Gables, Florida, and 5722 S. W. 8th Street, Miami, Florida. Oscar H. Morris, 5722 S. W. 8th Street, Miami, Florida:

You Are Hereby Notified that the Relator in the above styled cause will apply to the Honorable George E. Holt,

one of the Judges of the above styled Court, for a temporary restraining order on Monday, October 2, 1944, at 11:00 o'clock A. M. in the chambers of Judge Holt in the Dade County Court House.

Dated at Miami, Florida, this 25th day of September, A. D., 1944.

Stanley Milledge, as State Attorney in and for the Eleventh Judicial Circuit of Florida.

AFFIDAVIT OF MAILING

STATE OF FLORIDA,
County of Dade, ss:

On this day personally appeared before me, the undersigned authority, Billie Gillespie, who being first duly sworn says that she is employed in the office of Stanley Milledge, State Attorney for the Eleventh Judicial Circuit of Florida; that on September 25, 1944, she served a true copy of the above and foregoing Notice on each of the above defendants by placing same in envelopes addressed to said persons at their respective addresses shown above; that she placed on said envelopes sufficient uncanceled United States postage to carry same to their destination, and placed same [fol. 104] in the United States mail at the main Post Office, Miami, Florida, prior to 5:00 o'clock P. M. on said date.

Billie Gillespie.

Subscribed and sworn to before me this 25th day of September, A. D. 1944, Rhona Mixon. My commission expires: 4-4-48. (N. P. Seal.)

On September 29th, A. D. 1944 Summons was filed in the words and figures as follows, to-wit:

[Caption omitted]

SUMMONS IN CHANCERY

The State of Florida to Joseph W. Lipop, 825 Almeria Ave., Coral Gables, Florida, and 5722 S. W. 8th Street, Miami, Florida, and Oscar H. Morris, 5722 S. W. 8th Street, Miami, Florida.

You are hereby notified that a suit has been brought against you in the Circuit Court for Dade County, Florida, in Chancery, by the State of Florida, Ex Rel., Stanley Milledge, State Attorney, and you are hereby required to file your answer or motion to dismiss said bill of complaint within twenty (20) days after service of this summons upon you.

[fol. 105] Herein fail not or judgment will be entered against you by default.

You are further notified that the plaintiff in said cause, through its Relator, will apply to the Honorable George E. Holt, one of the Judges of said Court, for a temporary restraining order pursuant to the prayer of said bill on Friday, September 29, 1944, at 9:30 A. M. at the chambers of said Judge in Dade County Court House, Miami, Florida, or as soon thereafter as the said application can be heard.

Witness my hand and seal of said Court, at Miami, Dade County, Florida, this 23rd day of September, A. D. 1944.

E. B. Leatherman as Clerk of Said Circuit Court, by Wm. W. Stocking, Deputy Clerk. (Circuit Court Seal.)

Filed Sheriff's Office 1944 SE 23 AM 11 20 Dade County, Florida.

(The following Endorsement appears on the reverse side of Summons)

Served Lipop 9/23/44 16 m
No on Morris in U. S. Army 2 years

2 60
2 00

4 60

J. T. Vann

[fol. 106] On October 9, 1944 Suggestion of Military Service of Oscar H. Morris, Defendant, was filed in the words and figures as follows, to wit:

[Caption omitted]

SUGGESTION OF MILITARY SERVICE OF OSCAR H. MORRIS, Defendant

Comes now Joseph W. Lipop, one of the Defendants named in the foregoing styled action, and on behalf of the co-defendant, Oscar H. Morris, suggests to the Court that the said Oscar H. Morris is now in the Military Service of the United States, having been inducted on or about May 10, 1942, and that he is now beyond the territorial limits of the United States of America, and is now serving in the European theatre of war; and this defendant further suggests in behalf of said co-defendant, Oscar H. Morris, that the said Oscar H. Morris has a good and valid and meritorious defense to the allegations contained in the bill of complaint filed herein, and on behalf of said Oscar H. Morris this defendant denies each and every of the allegations of said bill of complaint made against Oscar H. Morris.

Joseph W. Lipop.

Robert C. Lane, Jeptha P. Marchant, Solicitors for Defendant, Joseph W. Lipop.

[fol. 107] On October 11th, A. D. 1944 STATEMENT OF EDISON PARKER was filed in the words and figures as follows, to-wit:

87365

Statement of Edison Parker taken in the Office of the State Attorney on September 21, 1944, at 10:00 A. M., in the presence of Mr. Milledge and Nelle Robinson, stenographer.

(Witness sworn in.)

Mr. Milledge:

Q. Will you please state your name and place of residence?

A. Edison Parker, 2212 N. E. 2nd Court.

Q. Mr. Parker, were you at the Tee Pee Club, 5722 S. W. 8th Street last Monday afternoon when two deputy sheriffs came there?

A. Well, I probably was. I gave what I thought was the deputy sheriff my name and address.

Q. They requested it of you?

A. Yes.

Q. Were you in the room which is behind the dining room on the south end of the building. That is, the room faces away from 8th Street?

A. I probably was.

Q. How long had you been there?

A. Only a short time. Maybe five minutes, maybe ten. Not very long.

Q. About how many persons were there, would you estimate?

[fol. 108] A. Well, there were several, maybe eight or ten, possibly more.

Q. Were you there as a customer?

A. No. I was drinking some beer in the bar and was there for quite a while. I had a few beers and asked the bartender where the men's room was and he told me in the rear. I went in the place and when I came out, they stopped me and asked me about my draft card. I asked who it was and they said the deputy sheriffs.

Q. Did you have any trouble getting in that room?

A. No.

Q. Was the door closed?

A. No. I don't believe it was—yes, it was closed, but I walked right in.

Q. Was there a doorkeeper on the door?

A. No. I just walked right in.

Q. You weren't particularly hunting for a gambling room?

A. No. I didn't have gambling on my mind.

Q. Had you ever been in that room before?

A. I probably have, but I don't know just when.

Q. Had you ever been in that room before while they were using it for ho-se booking?

A. No.

Q. On these prior occasions what was going on back there?

A. I don't recall. A number of years ago, three or four years ago, I used to go out that way. I don't know whether I was there or not.

[fol. 109] Q. This Monday afternoon, what did you observe while you were in the room?

A. When I walked through the place, I asked where the laboratory was and the fellow said "there", and then I came out and the fellow stopped me and asked me to give him my draft card. I noticed several people at the table drinking.

Q. Did you hear the results of any races being announced?

A. No.

Q. Did you notice a counter with several men behind the counter?

A. (Indicated "no".)

Q. When you got back to that room, you recognized it as a horse booking place?

A. Not necessarily.

Q. You didn't see anything there to suggest to your mind you were in a horse booking room?

A. No.

Q. You didn't know you were?

A. No.

Q. You have been in horse booking rooms and know what they look like?

A. (Indicated "Yes".)

Q. Did you see wall charts that posted the results of the races?

A. No. I wasn't in there for that purpose. I only stayed about five minutes.

Q. What is your business, Mr. Parker?

A. At the present time I am manager of a rooming house.

[fol. 110] Q. You say you go out to the Tee Pee Club frequently?

A. No, sir.

Q. Who runs that place?

A. I don't know.

Q. Do you know the names of any of the people that work there?

A. (Indicated "no".)

Q. You don't live in that vicinity?

A. No.

Q. Why would you be going that far out of your way just to have a bottle of beer?

A. That wasn't my purpose. I was driving around with two other people and we had to stop.

(No further questions.)

I have read this statement carefully before signing it and after being sworn to the truth by the State Attorney after appearing in his office in answer to a subpoena this September 22, 1944.

Edison Parker.

I certify that the foregoing is an accurate transcription of the testimony given by the foregoing witness on September 21, 1944, pursuant to a subpoena issued at my request and after being sworn by me.

Stanley Milledge, State Attorney.

[fol. 111] On October 11th, A. D. 1944 STATEMENT OF CHARLES A. ANDERSON was filed in the works and figures as follows, to-wit:

87365

Statement of Charles A. Anderson taken in the Office of the State Attorney on September 21, 1944, at 10:10 A. M., in the presence of Mr. Milledge and Nelle Robinson, stenographer.

(Witness sworn in.)

By Mr. Milledge:

Q. Please state your name and place of residence.

A. Charles A. Anderson, 852 S. W. 12th Court.

Q. Mr. Anderson, are you one of the persons whom the deputy sheriffs asked for the names and addresses when they made an arrest at the Tee Pee Club at 5722 S. W. 8th Street, Miami, Dade County, Florida, last Monday?

A. He didn't ask me for it. I gave it to him.

Q. You don't work there, Mr. Anderson?

A. No, sir.

Q. You were placing bets on horses?

A. No. Glen Wheat gave me a bill and told me the week before to come and get it Monday.

Q. Were you talking to Glen Wheat when the deputy sheriffs came in?

A. No, I was ready to go out.

Q. Had you already talked to him?

A. Yes.

[fol. 112] Q. Was he in the horse book room?

A. Yes.

Q. Was he there when the sheriff came?

A. I don't know.

Q. Do you understand that he runs that place?

A. I don't know his relationship to the place.

Q. How long had you been back in that room when the deputy Sheriffs came in?

A. About half an hour.

Q. What was going on there in that room?

A. Just a minute. I'll be frank with you. I have been here twenty years. I don't want to talk unless I see my attorney. How many names did they take?

A. Nineteen.

A. I seen the deputy and asked him how many names he had taken and he said all of them, so I said I would give him my name. He should have taken all of them. There were about forty there.

Q. All I'm interested in, Mr. Anderson, is to get testimony as to what was going on at the place.

A. I think that's right, but I don't want to get my name in the paper. I want to do everything I can within the law, see?

Q. Right now, I'm not interested even in a criminal procedure. I'm interested in an injunction against the place. Your appearance before me, as State Attorney, is the same thing as an appearance in court. You are under [fol. 113] oath, so you have no adequate choice other than to testify to what you saw. Did you hear the results of the races being called.

A. Yes. I heard the results of the races being called.

Q. There were several men behind the counter?

A. Mr. Attorney, I don't like to discuss that without some advice from my counsel.

Q. It isn't a question of the counsel. It's a question of telling the truth. Nobody is involving you in a suit.

A. It's a question of the court, isn't it?

A. Yes, and you can't refuse to testify here anymore than you can in court. You are not charged with a crime. Only persons charged with a crime are entitled to see counsel.

A. How many people are here?

Q. I have subpoenaed everybody I know about.

A. All the people that were there?

Q. I don't know. I wasn't there. Mr. Anderson, while you were there did you hear the results of races being called over a loud speaker?

A. Yes, I did.

Q. Do you recall the results of the races at what tracks were being called?

A. I guess several tracks.

Q. Do you remember any of them?

A. They were at Chicago and New York.

Q. Were the results of the races posted where the people there could see?

A. I don't think any of the results were posted. I didn't [fol. 114] see them.

A. I don't know what you mean by results.

Q. Who won, who places and the prices.

A. Yes. They had some prices.

Q. Did you observe any telephones?

A. Yes. You could see one. No, I didn't, I'm not sure about that.

Q. Did you see any bets placed?

A. I don't know whether they were placing bets or not.

Q. Did you see any money in evidence there?

A. No. Yes, Mr. Glen Wheat paid me his bill.

Q. Did you see any person going up to the counter and paying or receiving any money?

A. A lot of people went up to the counter. I can't speak for them.

Q. Did you observe any money changing hands at the counter?

A. I saw people have money. I didn't pay any attention. I can't say. I wasn't listening.

Q. What were you doing there after you finished collecting your bill?

A. There was several people there I knew. One particular Man was a neighbor. I sat there with him and had one bottle of beer.

Q. Who was he?

A. McCormick. (McCurnack?)

Q. First name?

A. As mentioned there on the subpoena.

Q. Joseph McCurnack?

[fol. 115] A. I guess that's his name.

Q. Is 1320 S. W. 11th Street where he lived?

A. I think that's the one. He's not very far from where I live. I have known him some time.

Q. That room can only be entered by going outdoors, is that correct?

A. I don't know. I came in from outdoors.

Q. You parked at the parking lot behind?

A. Yes.

Q. And entered through the south door?

A. West. I came in the South door.

Q. How large is the room?

A. A pretty good sized room. I would say probably thirty by forty. That's just a guess.

Q. What's in that room. What furnishings and equipment?

A. Some chairs and tables.

Q. And a counter?

A. Yes, and a counter.

Q. Is that across one end of the room?

A. Yes, partly. It's in the senter of the room and one side.

Q. That's across the east side?

A. Yes. I guess that's east.

Q. Is there a rack there for scratch pads and racing forms?

A. (Didn't answer question.) I think the counter is on the south side. The trail runs east and west?

Q. Yes.

A. Then it's on the south side.

Q. Was there a rack for scratch pads and racing forms?

A. I didn't see them.

[fol. 116] Q. You saw racing forms and scratch pads in evidence while you were there?

A. Yes. I saw them on the tables.

Q. You saw people having drinks at various times, being served by the waiters?

A. Yes. I saw them come from the saloon. That place belongs to the saloon, don't it?

Q. When was the last time you were there?

A. I was there to see Wheat the week before then, the week previously.

Q. To collect that bill, the same bill?

A. Yes.

Q. The bill you collected has nothing to do with the gambling business?

A. That was a personal bill.

Q. Was Wheat there on the prior occasion when you were there?

A. Yes.

Q. In that same room?

A. Yes.

Q. What was he doing when you went there?

A. He wasn't doing anything when I went there. He was at the door when I talked to him.

Q. You say you are a contractor?

A. Yes, sir.

Q. Was the bill you sought to collect for work done on the premises at that place?

A. No. It was not.

Q. Did you make any bets at the Tee Pee Club, 5722 S. W. 8th Street, Miami, Florida, Dade County, on Septem-
[fol. 117] ber 18, 1944?

A. I don't want to answer that question.

Q. You don't have any choice.

A. I don't like to be made a monkey of. I don't like, without protection of law, to be made to answer. I don't think it's fair.

Q. Do you refuse to answer the questions?

A. As far as I'm concerned, I'm not worried about what happens to the man who owns the place. I don't know who owns it. I don't want to get myself in any scrape. I want to keep out of these political affairs.

Q. Will you answer the question, or do you refuse. That's what I want to know.

Q. All right. I made some bets there.

Q. That afternoon, that——

A. Yes, sir.

Q. Did you win any?

A. No. I didn't win any. I don't think so.

Q. Have you ever made any bets there before at any time?

A. Yes. A long time ago I made some bets there.

Q. How long?

A. I don't know. About six months or something.

Q. Were there a number of people there on that occasion as there were last Monday afternoon?

A. ——

Q. Did you win on that occasion?

A. Same sort of set up.

Q. Did you win on that occasion?

A. I've won and lost. I don't know. My betting doesn't [fol. 118] amount to anything, a couple of dollars.

Q. In the last couple of years, about how many times have you been there to make bets?

A. I can't tell you.

Q. Half a dozen?

A. I might have been there frequently. I don't know how many times.

Q. Did you make bets on these occasions?

A. Sometimes. Not every time.

Q. Did you see other people make bets on those occasions?

A. Yes.

Q. Did you see Clarence Wheat there on any of those occasions?

A. No.

Q. Did Clarence Wheat ever tell you he had any interest in that place?

A. No, sir.

Q. Do you have any financial interest in that place?

A. No, sir.

Q. Your only interest was as a patron?

A. Yes. I just wanted a little diversion and bet a dollar or two.

(No further questions.)

* * * * * * *

I have read this statement carefully before signing it and after being sworn to the truth by the State Attorney after appearing in his office in answer to a subpoena this September 21, 1944:

[fol. 119]

Charles Anderson.

I certify that the foregoing is an accurate transcription of the testimony given by the foregoing witness on September 21, 1944, pursuant to a subpoena issued at my request and after being sworn by me.

Stanley Milledge, State Attorney.

On October 11th, A. D. 1944 Statement of LOUIS FASANY was filed in the words and figures as follows, to-wit:

Statement of Louis Fasany taken in the Office of the State Attorney on September 21, 1944, at 10:44 A. M., in the presence of Mr. Milledge and Nelle Robinson, stenographer.

(Witness sworn in.)

By Mr. Milledge:

Q. Will you please give your name and place of residence?

A. Louis Fasany. My new residence is 1670 S.W. 10th Street.

Q. Mr. Fasany, were you at the Tee Pee Club at 5722 S.W. 8th Street, Miami, Dade County, Florida, last Monday afternoon when the two deputy sheriffs were at the gambling room which is just south of the dining room at the Tee Pee Club?

A. Let me explain just how I got to be there. In the [fol. 120] first place I may be speaking out of turn. I have never been there before. I worked at the 36 Street Air Port. I met a painter out there who told me if I ever needed any work that he would be hanging around the Tee Pee Bar. The garage apartment had to be painted, in and out of my house so I went out there to S.W. 8th Street and Red Road and went inside. There were a few men there and I asked if any of them had seen Jack, the painter, and they said "Go out and go in the back door." I went outside, went to the left, in another building and asked if the painter was there. They didn't know. I had hardly been there a minute when the men came in.

Q. How long were you there before the deputy sheriffs came in?

A. I just went in and asked for Jack, the painter. Before I could say "what," the man said "Be seated, we want everybody's name and address."

Q. When you first went there to inquire for this painter, whom did you talk to?

A. I went in and walked to the bar and asked for the painter.

Q. Did they tell you to go to that back door?

A. Yes. They said, "Go through the screen door and go to the left to the other building."

Q. Did anybody try to stop you at the door?

A. I don't know.

Q. No one did stop you?

A. No.

Q. It was just as easy to enter that room as when you entered the bar from the street?

A. Yes, sir.

[fol. 121] Q. How many people were in there?

A. I wouldn't swear to that.

Q. I'm asking you to estimate. Was it crowded?

A. There were people in there.

Q. Was the room well filled with people?

A. I would be a liar if I told you how many were in there. I don't want to be a liar.

Q. What were the people in there doing?

A. That I don't know. I do know they took my name and address.

Q. Were they standing up or sitting down?

A. Sitting down. Some of them were standing up, too.

Q. Did you notice any of them drinking?

A. Yes, sir. I went in and asked this man if he knew Jack, the painter. I had just gotten there. Then I looked around and heard a man say, "Everybody be seated and don't worry. I want your names and addresses."

Q. You had never been in there before?

A. No, sir. Never in my life.

Q. Did you hear the results of the horse races being called while you were there?

A. No, sir.

(No further questions.)

* * * * * * *

I have read this statement carefully before signing it and after being sworn to the truth by the State Attorney after appearing in his office in answer to a subpoena this September 21, 1944:

[fol. 122] Louis Fasany.

I certify that the foregoing is an accurate transcription of the testimony given by the foregoing witness on Septem-

ber 21, 1944, pursuant to a subpoena issued at my request and after being sworn by me.

Stanley Milledge, State Attorney.

On October 11th, 1944 Statement of Oscar G. Davis was filed in the words and figures as follows, to-wit:

87365

Statement of Oscar G. Davis taken in the Office of the State Attorney on September 21, 1944, at 11:05 A.M., in the presence of Mr. Milledge and Nelle Robinson, stenographer.

(Witness sworn in.)

By Mr. Milledge:

Q. Will you please state your name and place of residence?

A. Oscar G. Davis, 944 N.E. 2nd Avenue.

Q. Mr. Davis, were you at the Tee Pee Club, 5722 S.W. 8th Street, Miami, Florida, last Monday afternoon when two deputy sheriffs were there and at their request you gave them your name and address?

A. Yes, sir.

Q. About how many persons would you estimate were present at that time?

[fol. 123] A. Well, between seventy-five and a hundred, I should say.

Q. How long have you been there before the deputies arrived?

A. I came in about two. They came in about four.

Q. What had you been doing during those two hours?

A. I made bets on horses.

Q. Did you win any bets?

A. Yes, I won two and lost on four.

Q. Did you collect on those you won on?

A. Yes, sir.

Q. Did you observe other people making bets?

A. Yes, sir. Money changed hands.

Q. That was what that was. It was a horse booking room?

A. Yes, sir.

Q. How many employees or persons working there did you observe?

A. About five regularly.

Q. One called the results of the races received over the telephone and one man posted the results on the wall charts and three men selling or cashing tickets?

A. Yes, sir. Only one man on the board and only one door man. There may have been some others. I don't know.

Q. That wasn't the first time you have been there?

A. No, sir.

Q. About how often have you been there?

A. About four times.

Q. During what period of time?

A. Over the last two weeks.

Q. As far as you know, have they been running horse book there more than a couple of weeks?

[fol. 124] A. I don't think so. I remember one time they were closed when I went there.

Q. How did you discover they had opened up again?

A. A man on the street working for the tra-ks told me.

Q. When you went there did you have trouble getting in?

A. No, sir.

Q. Just walked in?

A. Yes, sir.

Q. Did you have to tell them who you were?

A. No, sir.

Q. Did you go with anybody or just by yourself?

A. By myself.

Q. Who appeared to be in charge?

A. I really don't know who was in charge. There were three men on the desks.

Q. Do you know Joe Lipop?

A. No. I don't know any of the names.

Q. Did you observe any drinks being served in the horse book room?

A. No. They served them there. I saw some beer.

Q. A colored, negro, waiter would bring drinks from the bar?

A. Yes, sir.

Q. That room is on the south end of the building, the end away from the trial?

A. Yes, sir.

Q. You have to go outdoors to get in there?

A. Yes, sir.

Q. Go out of the bar and go in the open?
[fol. 125] A. Yes. In the rear.
Q. You can park your car and enter from the south side?
A. Yes, sir.

(No further questions.)

* * * * * * *

I have read this statement carefully before signing it and after being sworn to the truth by the State Attorney after appearing in his office in answer to a subpoena this September 21, 1944.

Oscar G. Davis.

I certify that the foregoing is an acc-rate transcription of the testimony given by the foregoing witness on September 21, 1944, pursuant to a subpoena issued at my request and after being sworn by me.

Stanley Milledge, State Attorney.

On October 11th, A. D. 1944, STATEMENT OF W. H. CURNS, was filed in the words and figures as follows, to-wit:

Statement of W. H. Curns taken in the Office of the State Attorney on September 21, 1944, at 10:48 A. M., in the presence of Mr. Milledge and Nelle Robinson, stenographer.

[fol. 126] By Mr. Milledge: (Witness sworn in)

Q. Will you please state your name and place of residence?
A. W. H. Curns, 5739 S. W. 2nd Terrace.
Q. Mr. Curns, were you present at the Tee Pee Club, 5722 S. W. 8th Street, Miami, Dade County, Florida, last Monday afternoon when two deputy Sheriffs entered the place and requested the names of persons there?
A. Yes.
Q. Did you give your name to the deputy sheriff?
A. Yes.
Q. How long had you been there prior to that time?
A. About five minutes.
Q. Had you ever been in that particular room on any other prior occasion?
A. Yes.

Q. Did you go there frequently?

A. No. But I have been there.

Q. About how many times would your say you have been there during the last year?

A. Just a few times, I would say. Probably a half a dozen times. I couldn't say exactly. They haven't been open long.

Q. How long have they been open this last time?

A. Not long.

Q. A few months?

A. No. A couple of weeks, I would say. I don't know for [fol. 127] sure about that, but it hasn't been long.

Q. How many times have you been there during the last week or two?

A. About five times I would say.

Q. Did you go there each time for the purpose of making bets?

A. No. Only once.

Q. Did you make bets on that occasion?

A. Yes. A couple.

Q. Did you win any?

A. No.

Q. Lost them all?

A. Yes.

Q. You have won, though?

A. Yes.

Q. They paid off?

A. Yes.

Q. Did they announce the results of the races and post the results of the races on the chart?

A. Yes.

Q. How many people would you estimate were there this past Monday afternoon?

A. I guess fifty.

Q. They were coming and going?

A. Yes, naturally.

Q. In order for you to gain entrance to that room, did you ever have any difficulty getting in and out?

A. No.

Q. Did anyone have to introduce you?

A. No.

[fol. 128] Q. It was just the same as walking through the bar?

A. That's right.

Q. Do you consider it was open to the public?
A. I would think so.
Q. You never observed a guard at the bar?
A. They had a man to open the door.
Q. How many people would you estimate were working in that room?
A. I think it was four.
Q. One to call the races and post the results?
A. One at the board——
Q. And two to sell cash tickets?
A. Three.
Q. Three to do that?
A. Yes.
Q. And you would estimate five altogether?
A. That's right.
Q. Do you know those people?
A. I know the man who runs the place.
Q. Who was that?
A. Joe Lipop.
Q. Do you know Clarence Wheat?
A. No.
Q. You don't know whether he was around there?
A. I don't know.
Q. Do you know the names of the other persons?
A. No. I never saw them, in fact.
Q. During the times you have been there the past two [fol. 129] weeks, they were the same employees?
A. Yes.
Q. Did Lipop appear to be in charge?
A. It was all the same. I don't know whether he was in charge or not.
Q. You have seen him back there in the horse book place?
A. Oh, yes.
Q. Were persons back there served from the bar?
A. Yes.
Q. Were you ever served from the bar?
A. No. I don't think I have.
Q. But you observed the waiters bringing beer?
A. Yes.
Q. Have you ever been to that gambling room at any prior time when it was running?
A. No.
Q. Just the past two weeks?
A. That's right.

Q. How did you learn they were opened up and running?

A. I was at the Black Cat and seen them running.

Q. It was a matter of common knowledge that they were running?

A. Yes.

Q. Anybody would know it. They were not secretive about it?

A. They didn't seem to be.

(No further questions.)

* * * * * * * *

I have read this statement carefully before signing it and [fol. 130] after being sworn to the truth by the State Attorney after appearing in his office in answer to a subpoena this September 21, 1944.

W. H. Curns.

I certify that the foregoing is an acc-rate transcription of the testimony given by the foregoing witnes- on September 21, 1944, pursuant to a subpoena issued at my request and after being sworn by me.

Stanley Milledge.

On October 11th, 1944, Statement of JOSEPH MCCORMACK was filed in the words and figures as follows, to-wit:

87365

Statement of Joseph McCormack taken in the Office of the State Attorney on September 21, 1944, at 3:15 P. M., in the presence of Mr. Milledge and Nelle Robinson, stenographer.

(Witness sworn in.)

By Mr. Milledge:

Q. Will you please state your name and place of residence?

A. Joseph McCormack, 1320 S. W. 11th Street.

Q. Mr. McCormack, were you at the Tee Pee Club, 5722 S. W. 8th Street, Dade County, Florida, last Monday afternoon?

[fol. 131] A. Yes, sir.

Q. Were you in the room of the building which is behind the dining room?

A. Yes, sir.

Q. That's the room that's fitted up for horse book operations?

A. That's the way it was when I was there.

Q. How many persons would you estimate were there?

A. That's rather hard to say. I don't know. I would say maybe twenty-five, twenty, fifteen. This sounds rather unbelievable. I went there with the express purpose of betting a horse. I looked at my sheet where my horse was supposed to be and it had already run. Then the sheriffs came and said they were taking the names of all the people there. I gave my name and address. I can truthfully say that I hadn't been in there for more than fifteen or twenty minutes and there were between fifteen or twenty-five people. Now, if that's right or not, I don't know.

Q. How many employees would you estimate?

A. I couldn't tell you, sir. When I went in, I looked at the board and then walked over to the table where the newspapers were.

Q. That's the board from which the results of the races are posted?

A. That's right.

Q. Were any results of races called?

A. I can't truthfully answer that question, sir. It might [fol. 132] have been, it might not. When I looked at the board, from there I went over to the table. I couldn't say.

Q. Did you see any persons making any bets?

A. The actual exchange of money? I did not. I presume they did, of course.

Q. You say you went there for the purpose of making a bet. You had been there before?

A. No. I was in the bar. I presumed you could make one and went in there. I was in there too late because the horse had already run.

Q. Did you see the results of the race in which your horse ran?

A. My horse ran, yes, sir.

Q. Did you have any difficulty in getting in?

A. No.

Q. Did the people there know you?

A. No, sir. I know Henry, the bar tender.

Q. I mean the people of the bookie?
A. No sir.
Q. Was the door open?
A. No, sir.
Q. But it opened to admit you?
A. Yes, sir.

(No further questions.)

* * * * * * *

I have read this statement carefully before signing it and after being sworn to the truth by the State Attorney after appearing in his office in answer to a subpoena this Sep-
[fol. 133] tember 22, 1944:

Joseph McCormack.

I certify that the foregoing is an accurate transcription of the testimony given by the foregoing witness on September 21, 1944, pursuant to a subpoena issued at my request and after being sworn by me. The witness was excused until the statement could be typed, but did not return.

Stanley Milledge, States Attorney.

On October 11th, A. D. 1944 Motion to Suppress Testimony was filed in the words and figures as follows, to-wit:

(Caption omitted)

MOTION TO SUPPRESS TESTIMONY

Comes now Joseph W. Lipop, one of the defendants named in the above entitled action, by and through his Solicitors, Robert C. Lane and Jeptha P. Marchant, and moves the Court to suppress all of the evidence obtained by the arresting officers, Tom Burke and R. D. Hughes, on September 18, 1944, at and in the building and premises known as 5722 S. W. 8th Street, Miami, Florida, upon the following grounds:

1st. That the Officers falsely represented and stated at the time of obtaining such evidence that Officer Burke had in his possession a Search Warrant for said premises, when as a matter of truth and fact he did not have in his
[fol. 134] possession at the time of making the raid upon

said premises on September 18, 1944, a legally issued Search Warrant for said Premises, and said search was illegally and unlawfullly made by said Officers; that the said Officer Burke, in connnection with his statement that he did have such a Search Warrant, exhibited to this defendant a batch of papers which he represented as being a valid Search Warrant for said premises, whereupon this defendant permitted and allowed said Officers to enter upon the premises and obtain the evidence upon said false representation by said Officers that they had a Search Warrant covering the premises.

2nd. That the acts and deeds of the Officers in obtaining said evidences constituted an unlawful and illegal search and seizure of the premises located at 5722 S. W. 8th Street, Miami, Florida, and for this reason all such evidence obtained by said Officers, Tom Burke and R. D. Hughes, on September 18, 1944, during such illegal and unlawful search and seizure, should be suppressed by the Court.

Wherefore, this Defendant moves that this Court enter its Order herein suppressing all the evidence obtained by Officers Tom Burke and R. D. Hughes, on September 18, 1944, at and in the building and premises known as 5722 S. W. 8th Street, Miami, Florida, at the time of the alleged unlawful search and seizure, and that the bill for injunction herein filed may be dismissed.

Robert C. Lane, Jeptha P. Marchant, Solicitors for Joseph W. Lipop, Defendant.

———

[fol. 135] On October 11th, A. D. 1944 Opinion and Order was filed and on the 12th day of October A. D. 1944 was duly recorded in Chancery Order Book 702, on page 455, in the words and figures as follows:

(Caption omitted)

OPINION AND ORDER

HOLT, J.:

The state seeks to abate a nuisance (bookmaking) on the premises described in the amended bill.

It is contended and the evidence seeks to show that gambling in the form of bookmaking has been carried on

in a certain room separate and distinct from the main building (5722 S. W. 8th Street), with an entrance thereto facing Southwest 9th Street.

The witnesses on behalf of the State did not testify as to seeing any actual gambling, although one stated he saw some money pass and heard voices (while outside) calling races and the results thereof.

Five affidavits of persons who allegedly visited the premises for the purpose of placing bets were introduced (over the objection of the defendant) by the State. These go more into detail then the "live" witnesses before the court, but cannot be considered. The defendant cannot cross-examine an affidavit. The Court cannot determine who is testifying and whether belief can be placed upon such testimony. The manner and demeanor of the witness while testifying is lacking.

[fol. 136] It is an old saying (and a true one) that "anybody will sign an affidavit", and "you can prove anything by an affidavit". The fact that such affidavits were taken before the State Attorney does not give them any additional weight of value. It would be a vicious and unfair practice to take property upon such proof, (if it can be called such).

The inescapable conclusion is that the State has failed to prove its case by competent evidence. It is true this is not a criminal proceeding, yet the law is specific that the testimony should be of such character that it will sustain the allegations of the bill. Measured by such requirement it falls far short.

See Solomon vs. State, 156 So. 401, where it was announced that one "cannot be convicted on guess work and suspicion"; also Valdez vs. State, 194 So. 388.

It Is Thereupon Ordered, Adjudged and Decreed that plaintiff's motion for temporary injunction against the defendants be, and the same is hereby denied.

Done and Ordered at Miami, Florida, this 10 day of October, A. D. 1944.

George E. Holt, Circuit Judge.

On October 11th, A. D. 1944 Motion to Set Aside Order Denying Temporary Injunction was filed in the words and figures as follows, to-wit:

(Caption omitted)

[fol. 137] MOTION TO SET ASIDE ORDER DENYING TEMPORARY INJUNCTION

The State respectfully moves the Court to set aside the Order of October 10, 1944, in the above styled case, denying the State's application for temporary injunction of a public nuisance known as the "TeePee Club," 5722 S. W. 8th Street, and for grounds of such motion shows to the Court as follows:

From said Order it appears that the only reason assigned by the Court for denying temporary injunction is the insufficiency of the State's office to show the existence of a gambling house, defined to be a public nuisance under Section 823.05, Florida Statutes 1941, which reads as follows:

> "823.05 Places declared a nuisance; may be abated and enjoined. ——Whoever shall erect, establish, continue, or maintain, own or lease any building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in Sec. 823.01, or shall be frequented by the class of persons mentioned in Sec. 856.02, or any house or place of prostitution, assignation, lewdness or place or building where games of chance are engaged in in violation of law or any place where any law of the State of Florida is violated, shall be deemed guilty of maintaining a nuisance, and the building, erection, place, tent or booth and the furniture, fixtures and contents are declared a nuisance. All such places or persons shall be abated or enjoined as pro-
> [fol. 138] vided in §§ 64. 11-64. 15."

More specifically it appears from said Order that the affidavits of persons present, as patrons, in the gambling establishment, there making bets on horse races, was considered by the Court as improper proof and "cannot be considered."

The proceedings in this, and similar cases, are expressly defined by *by* statute, Sections 64.11-64.15, Florida Statutes 1941, and Section 64.12 specifically provides that:

> "* * * If it shall appear to the satisfaction of the court, Judge or court commissioner by evidence or by affidavit that a temporary injunction shall issue, the court, judge or court commissioner may in his discretion pending the determination of the bill on a final hearing enjoin * * * Etc."

The sworn statements of patrons referred to were taken in the State Attorney's office pursuant to subpoenas issued and oaths administered, and the persons testifying were patrons of the gambling house, whose names were taken by the deputy sheriff making the arrest of one agent of the operator on September 18, 1944. Obviously, persons in this category would not be likely to make false statements in order to assist the State in suppressin- a gambling house as a nuisance; and we submit, therefore, that this form of proof is of far higher type than the usual affidavits of interested persons. The State, however, has not asked the Court, and does not ask now, that these statements be considered as more than affidavits, but in view of the fact [fol. 139] that under the statute proof by affidavit alone is quite sufficient we submit that there is no authority in law whatever to ignore this form of proof, but on the contrary it is very specifically provided for.

The State further points out that in chancery practice, generally, it is well established procedure to consider affidavits on application for temporary injunction. 32 C.J. 353 High on Injunctions, Second Ed. Sec. 1576.

While numerous other difficulties seemed to have been encountered by the State in the past on applications to suppress gambling houses as statutory public nuisance, so far as can be ascertained this is the first instance in which the use of affidavits has been assigned as a reason for refusing to enjoin.

The procedu-al statute above referred to in Section 64.15 specifically provides that "in such actions evidence of the general reputation of the alleged nuisance and place shall be admissible *for the purpose of proving the existence of said nuisance.*" Such evidence, obviously, is not admissible

in a criminal case, but this statutory rule of evidence is not only important as defining the prescribed quality of proof but clearly illustrates that the same rules of evidence applicable to a criminal case are not required when the State seeks to suppress a public nuisance. It is obvious from the quoted statute that proof of reputation alone is sufficient to warrant the injunction, both temporarily and permanently.

In this case proof of the reputation of the TeePee Club was established by the "affidavits" of the patrons, the testimony of deputy sheriff Burke; by the refusal of the de- [fol. 140] fendant, Lipop, to answer the State's questions touching his operations at the TeePee Club on the ground that such answers might tend to incriminate him; and by proof of prior arrests and convictions of persons operating gambling at this establishment; namely, Lee Mack, convicted October 1, 1942, George Burgess and Louis Myers, convicted August 10, 1944, and Joseph Lipop, one of the defendants and owner, arrested there November 6, 1943, and informed against by the County Solicitor for the felony of operating a gambling house, and still awaiting trial.

The circumstances surrounding the construction of the gambling room addition, and its peculiar arrangement of doors and windows twelve feet about the ground, indicate that it was built for the precise purpose of maintaining a gambling room in defiance of the laws. The Court will doubtless recall that the State asked Joseph Lipop "for what purpose he built this addition," and Lipop refused to answer on the ground that it might incriminate him, which refusal the Court sustained.

The Court will also recall that the defendant, Lipop, admitted ownership of the property by himself and Oscar H. Morris since 1940, and admitted operation and control of the entire premises at the time the suit was filed and for a considerable period prior thereto, and that Lipop had knowledge of the conviction of persons for operating gambling there.

The Court will also recall that the proof showed that the bar, night club and gambling room were all operated as a co-related single business, and that the gambling operations on September 18, 1944, and at various prior times, were large enough to require the services of five employees,

calling and posting the results of races and prices, taking [fol. 141] and paying bets, not to mention the waiters bringing drinks from the the bar to a large crowd of patrons assembled in the gambling room.

The distinction between a criminal prosecution and a suit by the State to suppress a nuisance has been many times pointed out by our Supreme Court. As illustrative of this we cite the following:

> "• • • Suppressing the place constituting a nuisance is a very different matter from prosecuting criminally those who commit felonious acts contributory to it, but the fact that the nuisance is abated by bill in equity is no bar to prosecution of those guilty of a felony contributing to it. This question was conclusively settled in the well considered opinion in Pompano Horse Club vs. State • • • Etc."
>
> Merry-Go-Round, Inc. v. State, ex Rel. Jones Sou. 186, Page 538; Text 539.

Even if the strict and technical rules of evidence in a criminal proceeding were applied, the testimony of the deputy sheriff alone that on September 18, 1944, he observed the usual paraphernalia of a horse booking room was quite sufficient to make a prima facie case for the State under Section 849.05, Florida Statutes 1941, which reads as follows:

> "849.05 Prima Facie evidence.—If any of the implements, devices or apparatus commonly *used* in games of chance in gambling houses or by gamblers, are found in any house, room, booth, shelter or other [fol. 142] place it shall be prima facie evidence that the said house, room, booth, shelter or other place where the same are found is kept for the purpose of gambling."

The Defendants had ample written notice of the hearing for injunction; the defendant, Lipop, was present, represented by three lawyers, and had, therefore, ample opportunity to refute the State's proof that the defendants owned, operated and controlled a gambling house, which constitutes a public nuisance. So far from refuting any

of the State's proof the defendant, Lipop, actually refused to answer many of the State's questions concerning his business there on the ground that it would tend to incriminate him, clearly evidencing his guilt of the State's charges; and in a proceeding to suppress a nuisance we submit that Lipop's invoking of constitutional guarantees against self incrimination corrobo-ated the truth of the State's proof, and at the very least cannot be taken as any sort of denial.

The obvious purpose of the statute defining gambling houses as public nuisances, and prescribing the procedure by which it is the duty of the State to suppress them, was to close such places as the TeePee Club. "When a State, exerting its recognized authority, undertakes to suppress what it is free to regard as a public evil, it may adopt such measures having reasonable relation to that end as it may deem necessary in order to make its action effective. Pompano Horse Club Co. vs. State, 111 So. 801."

The State asks for no indulgencies from the Court merely because its object is to enforce the law in the public interest. The State does not ask the Court to deprive these defend- [fol. 143] ants, or any other defendants, of one jot or title of any of their legal rights. The State simply asks the Court to apply the law which the legislature has defined under the procedure it has prescribed. None of the numerous counsel for the defendants, either by argument, brief or motion, nor has the Court in its Order of October 10, 1944, pointed out a single particular in which the State has failed to prove the existence of a public nuisance and in the precise manner as defined by law.

Wherefore, the State respectfully moves the Court to set aside the Order of October 10, 1944, and to have an Order on the proof heretofore submitted enjoining the defendants' premises as described in the bill, and as amended at the hearing, as a public nuisance pending a final hearing.

Stanley Milledge, as State Attorney in and for the 11th Judicial Circuit of Florida.

On October 12th, A. D. 1944 Order was filed and on the 13th day of October, A. D. 1944 was duly recorded in

Chancery Order Book 702, on page 489, in the words and figures as follows, to-wit:

[Caption Omitted]

ORDER

This cause coming on to be heard on the motion of the State Attorney to set aside the order therefore entered herein denying temporary injunction, the same having been [fol. 144] duly considered, and the State Attorney having waived argument and the court being fully advised in the premises:

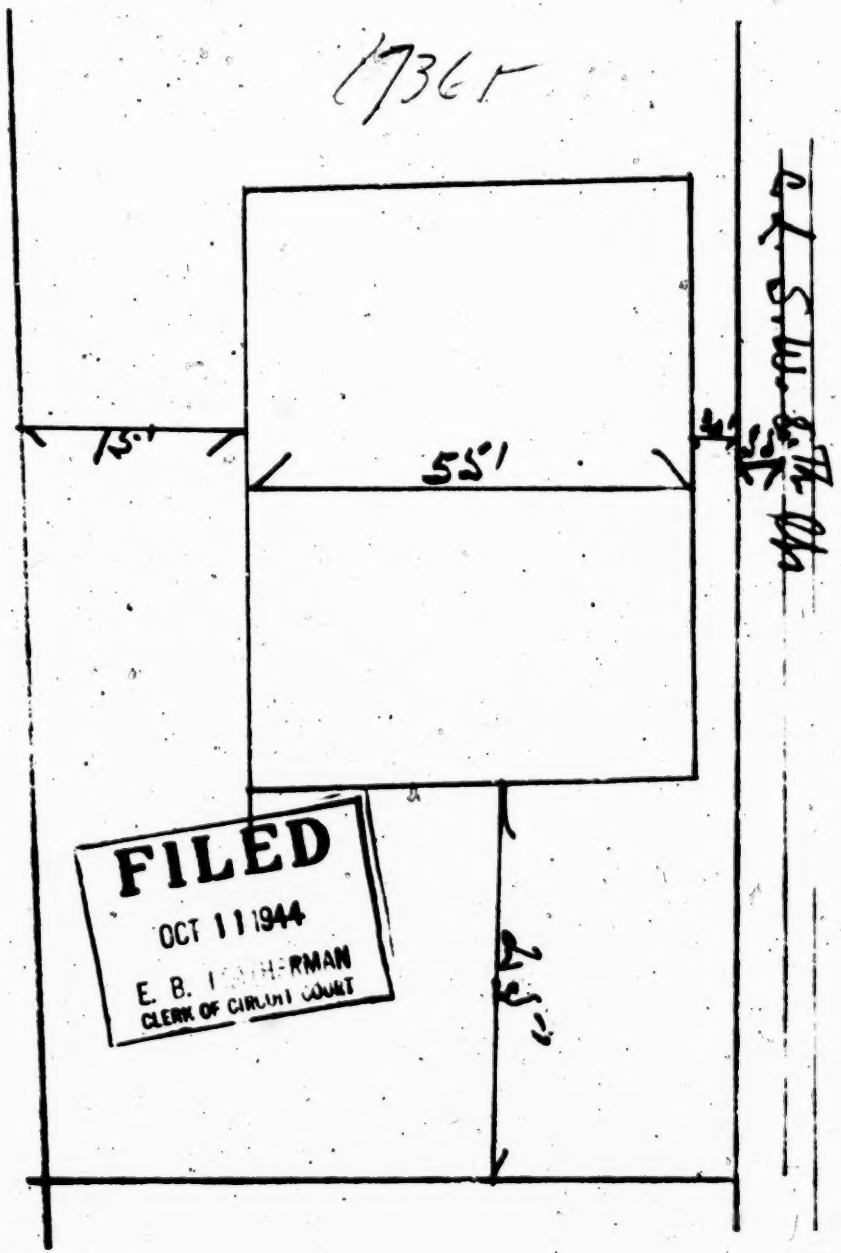
It is Thereupon Ordered, Adjudged and Decreed that said motion be, and the same is hereby denied.

Done and Ordered at Miami, Florida, this 12th day of October, A. D. 1944.

George E. Holt, Circuit Judge.

[Here follows 1 photolithograph, side folio 145.]

On October 11th, A.D. 1944 Diagram showing location of Building adjacent to S.W. 8th Street, Miami, Florida, was filed:



[fol. 146] State of Florida, County of Dade, ss

I, E. B. Leatherman, Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Do Hereby Certify that the foregoing pages numbered from one to 50 inclusive, contain a correct transcript of the record of the Judgment in the case of State of Florida, Ex Rel: Stanley Milledge, as State Attorney for the Eleventh Judicial Circuit of Florida, Plaintiff, against Joseph W. Lipop and Oscar H. Morris, Defendant, and a true and correct recital and copy of all such papers and proceedings in said cause, as appears from the records and files of my office.

In Testimony Whereof; I have hereunto set my hand and affixed the official seal of said Circuit Court on this the 21 day of November, A. D. 1944.

E. B. Leatherman, Clerk of the Circuit Court, by L. G. Woodward, Deputy Clerk. (Court Seal.)

[fols. 147-148] DEFENDANT'S EXHIBIT "B"

TRANSCRIPT OF RECORD FROM THE CIRCUIT COURT IN AND FOR THE COUNTY OF DADE IN THE CASE OF STATE OF FLORIDA, EX REL. STANLEY MILLEDGE, AS STATE ATTORNEY FOR THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, PLAINTIFF, V. THE BROOK CLUB, INC., ET AL., DEFENDANTS—Filed Nov. 28, 1944.

E. B. Leatherman, Clerk of Circuit Court

Chancery No. 84054-A

STATE OF FLORIDA EX REL. STANLEY MILLEDGE, AS STATE ATTORNEY for the Eleventh Judicial Circuit of Florida, Plaintiff,

vs.

THE BROOK CLUB, INC., et al., Defendants

[fol. 149] On March 22nd, A. D. 1944 Bill of Complaint was filed in the words and figures as follows, to-wit:

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY

No. 34054-A

STATE OF FLORIDA EX REL. STANLEY MILLEDGE, AS STATE ATTORNEY for the Eleventh Judicial Circuit of Florida, Plaintiff,

vs.

THE BROOK CLUB, INC., et al., Defendants

Injunction to Abate Nuisance

BILL OF COMPLAINT

The State of Florida, by Stanley Milledge, State Attorney in and for the Eleventh Judicial Circuit of Florida, as Relator, brings this bill of complaint against The Brook Club, Inc., a corporation organized and existing under the laws of the State of Florida, having its principal place of business in Dade County, Florida, Harry McLeod, whose permanent residence is unknown but who sojourns in Dade County during the winter tourist season, and William Maher, who resides in Dade County, Florida; and thereupon complaining said Relator informs the Court and alleges as follows:

1

There is now being conducted and for some time past [fol. 150] has been conducted and maintained in Dade County, Florida, within the town limits of the Town of Surfside, a well-known public nuisance in villation of Section 823.05, Florida Statutes 1941, known as "The Brook Club," which consists of a building on the land herein described, in which is maintained divers equipment and apparatus for engaging in unlawful games of chance, and where various unlawful games of chance are engaged in for money in violation of the laws of Florida, which games are played for usually large but sometimes relatively small sums of money in the form of wagers, bets and stakes, and include the games of roulette, craps or dice, and various forms of gambling with cards.

2

Said building is situated upon land facing east on Harding Avenue between 94th and 95th Streets in the Town of Surfside, Dade County, Florida, particularly described as follows, to-wit:

Lots 1 to 8 both inclusive, Lots 27 to 32 both inclusive, in Block 5 of Altos Del Mar No. 6, a subdivision according to the plat recorded in Plat Book 7, page 106, Public Records of Dade County, Florida, also the unnumbered lot or parcel in the Southeast corner of said Block 5 of said Subdivision; all in Dade County, Florida.

Said building contains a bar, some facilities for preparing and serving food, musical entertainment and a place for the [fol. 151] guests to dance, but the serving of food and drinks and the entertainment is only incidental to the primary purpose of maintaining and operating an unlawful gambling house.

3

The principal unlawful games engaged in on said premises as aforesaid are roulette, craps or dice, and various kinds of gambling at cards including chemin-de-fer, which several games are conducted by means of tables, wheels, dice, cards and other equipment in the usual manner but conducted on an extensive scale. The name "Brook Club" and whatever semblance the operators of said establishment use to make it appear that admission to said establishment is limited to members of a private club, are mere subterfuge; the said premises and the unlawful games of chance played therein are open without substantial obstacles to a large class of the public; the said establishment is a well-known gambling house; the nature of which is a matter of common knowledge, and the said premises constitute a public nuisance under the law. Relator alleges that notwithstanding the statutes against the maintenance of gaming houses and despite the public pronouncement from time to time by public officials charged with the duty of uniformly enforcing the criminal laws of the State of Florida (and notwithstanding the protestations of the defendants heretofore filed in Chancery cause # 61247-D in this Court that the said defendants had per-

manently desisted from operating an unlawful gambling house on said premises), the said premises have been by common repute maintained and conducted as aforesaid by the defendants from and after about January 13, 1944 [fol. 152] without substantial interruption and that the said defendants continue so to conduct and maintain the same in defiance of the laws of the State of Florida and of the public officials charged by law with the duty to enforce said laws.

That recently, on March 18, 1944, there were many persons, to-wit: 200 or more in said premises, many of whom are engaged in playing various of said unlawful games of chance; that said unlawful games of chance have likewise been engaged in by divers persons, and said defendants have maintained and conducted said place for said persons before and since said time; that the location, nature and purpose of said place are commonly and widely known to such an extent that they are subjects of common discussion; that the maintenance of said place for the purposes and in the manner aforesaid constitutes an unlawful public nuisance and tends further to bring Dade County and the cities within said County into national disrepute.

4

Relator alleges that according to the Public Records of Dade County, Florida, the defendant The Brook Club, Inc. (of which Ray Semmes is President, A. M. Dewey, Vice President, J. M. Dunne, Secretary, and R. B. Gautier, Jr. Resident Agent) is the owner of the above described real estate, and that the defendants Harry McLeod and William Maher (in the guise of some legal fiction unknown to Relator) actively operate, manage and conduct the said gambling establishment in the manner and for the purpose [fol. 153] aforesaid, and that unless restrained said defendant will continue to operate and conduct the same or will permit it to be operated and conducted at said premises indefinitely, in open disregard, violation and defiance of the laws of Florida, in willful contempt and disregard of and to the injury and corruption of the public morals and decency of Dade County and the State of Florida.

5

Relator alleges that heretofore on February 13, 1940 the State of Florida on the relation of George Couper Gibbs, the then Attorney General, in Chancery cause #61247, brought a bill in this Court to enjoin the premises herein described and against the defendants The Brook Club, Inc., Harry McLeod, William Maher, and others, from maintaining a public nuisance under Section 823.05, Florida Statutes of 1941, then designated as Section 7832, Compiled General Laws of Florida 1927, to which bill the defendant, The Brook Club, answered (the other defendants adopting the answer) admitting the operation of illegal gambling but asserting that its reason for violating the laws of Florida was that "this defendant, believing that, because of the apathy or sympathy of the local community in which its club is situated and of Dade County generally, the statutes prohibiting gaming would not be strictly enforced by officers of the law, encouraged and cooperated with the operators of the gambling room in the said building. This defendant especially believed that a place, located as its club is and conducted on the high plane that such club has been conducted, would not be molested by law enforcement officers [fol. 154] even if it should be generally known that unlawful games of chance should be permitted and encouraged in such place * * *. This defendant however became thoroughly convinced, prior to the institution of this suit, that the Sheriff of Dade County, Florida, and his deputies would no longer tolerate or permit illegal gaming on this defendant's premises or elsewhere in Dade County. This defendant immediately caused its lessees and tenants to discontinue and abandon their gambling operations. Prior to the institution of this suit this defendant had voluntarily and in good faith permanently abated the nuisance of which the relators complain in the bill of complaint filed herein. The cessation of the unlawful practices which it had heretofore permitted is not a mere temporary cessation. This defendant does not intend to and will not permit a revival or renewal of such practices. The voluntary abatement by it of the nuisance complained of herein is bona fide and permanent * * *. Furthermore, the Sheriff and other law enforcement officials of Dade County are performing and discharging their duties in the enforcement of the laws against gaming and gambling and the methods and means

employed by them in the performance and discharge of their duties are effective in compelling obedience to such statutes and the statutes and laws forbidding the creation and maintenance of nuisances; and, therefore, no necessity exists for invoking the aid of a court of equity in this suit."

In said cause the Circuit Court of Dade County, by reason of the defendant's answer above referred to and the reliance of the State of Florida upon such representations, [fol. 155] denied the application for temporary restraining order but retained jurisdiction so that the State could renew the application for a restraining order "if it be shown that the operation of the nuisance complained of shall have been resumed hereafter or that the defendants shall not have performed or complied with such representations."

Thereafter on April 28, 1941, the then Attorney General, the Honorable J. Tom Watson, filed a motion in said cause to withdraw the name of the Attorney General as a party plaintiff, upon which motion the cause was dismissed by the Court on May 12, 1941, for lack of plaintiff.

6

The proceedings heretofore brought by the State of Florida, referred to in the preceding paragraph, show the period of time during which these defendants have successfully flouted the laws of the State of Florida, and show further that the representations by said defendants as to their good faith in terminating their unlawful gambling operations are utterly worthless and unreliable and that no confidence whatever can be placed in the representations of said defendants, and show that said defendants have a disregard for the courts of this State as well as for the law enforcement officials of Dade County, Florida.

Wherefore it is respectfully prayed on behalf of the State of Florida that the Court temporarily restrain and enjoin the defendants, their agents, servants and employees, from conducting, maintaining or operating or from permitting to be maintained, conducted or operated each and every or [fol. 156] any of said unlawful games of chance or any unlawful game of chance on said premises or elsewhere in said County, and from maintaining on or near the same any equipment or apparatus designed and intended for use in unlawful gambling; that the defendants until further order be enjoined from using or permitting said premises to be

used for any purpose whatsoever and that upon final hearing said injunction be made permanent and perpetual; and that the defendants be required to pay the costs of this suit and that a lien therefore be decreed in favor of the State upon the property and fixtures in said premises or upon said real estate and building.

Stanley Milledge, As State Attorney in and for the Eleventh Judicial Circuit of Florida.

[fol. 157] On March 30th, A. D. 1944 Summons was filed in the words and figures as follows, to-wit:

Case No. 84054

Summons in Chancery

The State of Florida

To The Brook Club, Inc., a Florida corporation, Harry McLeod, William Maher:

You are hereby notified that a suit has been brought against you in the Circuit Court for Dade County, Florida, in Chancery, by State of Florida ex rel. Stanley Milledge, as State Attorney for the Eleventh Judicial Circuit of Florida, and you are hereby required to file with the Clerk of said Court your written Appearance (personally or by Attorney) in said suit on the first Monday in April, A. D. 1944, being the 3rd day of said month, and thereafter to file with said Clerk your written defenses, if any, to the bill of complaint in said suit at the time prescribed by law.

Herein fail not or judgment will be entered against you by default.

Witness my hand and seal of said Court, at Miami, Dade County, Florida, this 22 day of March, A. D. 1944.

E. B. Leatherman, as Clerk of said Circuit Court, by Wm. W. Stocking, Deputy Clerk. (Circuit Court Seal.)

[fol. 158] Filed Sheriff's Office. 1944 Ma. 22 P. M. 4 40. Dade County, Florida.

No. 84054

Original Return

Received this Subpoena in Chancery on the 22nd day of March, 1944 and returned the same unexecuted for the reason that after diligent search failed to fine any officer or agent of the within named corporate defendant, to-wit: The Brook Club, Inc., a Florida corporation, in Dade County, Florida, upon whom this process could be served; and returned the same unexecuted for the reason that after diligent search failed to find the within named defendants, to-wit: Harry McLeod and William Maher, in Dade County, Florida.

Copy and return .60. D. C. Coleman, Sheriff, Dade County, Florida, by H. Cheetham, D. S.

[fol. 159] On March 25th, A. D. 1944 Praecipe for Witness Supboena was filed in the words and figures as follows, to-wit:

(Caption omitted)

Praecipe for Witness Subpoena

The Clerk of the above named Court will please issue a witness subpoena in the above entitled cause directed to the following:

Harry McLeod, 9199 Collins Ave., Surfside, Fla.
Ray Semmes, 4601 North Bay Road, Miami Beach, Fla.
William Maher, 4630 Pine Tree Drive, Miami Beach, Fla.
F. W. Hackett, Chief of Police, Surfside, Fla.
A. M. Dewey.
J. M. Dunne.

returnable before the Judges of the above named Court at the Court House in Miami, Dade County, Florida, on the 28th day of March, A. D. 1944, at the hour of 2:30 P. M. o'clock and oblige.

Stanley Milledge, State Attorney.

[fol. 160] On April 1st, A. D. 1944 Witness Subpoena was filed in the words and figures as follows, towit:

Witness Subpoena—Civil

In the Name of the State of Florida

#64054

State of Florida,
County of Dade, ss:

To All and Singular the Sheriffs of the State of Florida:

You are hereby requested to summon Harry McLeod, 9199 Collins Ave., Surfside, Fla., Ray Semmes, 4601 North Bay road, Miami Beach Fla. William Maher, 4630 Pine Tree Drive, Miami Beach, Fla., A. M. Dewey, J. M. Dunne, F. W. Hackett, Chief of Police, Surfside, Fla. personally to be and appear before the Judge of our Circuit Court of the Eleventh Judicial Circuit of the State of Florida, at the Court House in Miami on the 28th day of March, A. D. 1944, at 2:30 P. M. to testify in behalf of the —— in a certain suit pending in said Court, wherein State of Florida, Ex Rel. Stanley Milledge, as State Attorney for the 11th Judicial Circuit of Florida is Plaintiff and The Brook Club, Inc., et al., Defendants, and herein fail not under penalty of law.

Witness, the Honorable Paul D. Barns, Ross Williams, Richard H. Hunt, George E. Holt, Marshall C. Wisecheart, and Arthur Gomez, Judges, et al. as also E. B. Leatherman, Clerk, and the Seal of said Court at the Court House in Miami, Florida, this 25th day of March, A. D. 1944.

E. B. Leatherman, Clerk of the Circuit Court, By Wm. W. Stocking, Deputy Clerk. (Circuit Court Seal.)

—— ——, Attorney.

[fol. 161] SHERIFF'S OFFICE

Filed Ma 25 1944 10 03 A M

DADE COUNTY, FLORIDA:

Received this writ on the — day of —— A. D. 194–, and executed the same in the County of ——, Florida, on the — day of ——, A. D. 194–, by —— ——. I, Ernest E. Roberts hereby accepts service for the following named witnesses, as Attorney.

Harry McLeod.
William Maher.

Served F. W. Hackett. 3-27-44. 26 M. No service on Semmes, Dewey or Dunne. All in the North. 3-27-44.

Ernest E. Roberts, as Attorney.

Sheriff of —— County, Fla., By —— ——, Deputy Sheriff.

On March 30th, A. D. 1944 Praecipe for Witness Subpoena was filed in the words and figures as follows, to-wit:

(Caption omitted)

PRAECIPE FOR WITNESS SUBPOENA

The Clerk of the above named Court will please issue a [fol. 162] witness subpoena in the above entitled cause directed to the following:

Harry McLeod, 9199 Collins Ave., Surfside, Fla.
William Maher, 4630 Pine Tree Drive, Miami Beach, Fla.
Ray Semmes, 4601 North Bay Road, Miami Beach, Fla.
A. M. Dewey.
J. M. Dunne.
Charles Robbins, Deputy U. S. Marshal.
Lt. C. O. Huttoe, Miami Police Dept.
F. W. Hackett, Chief of Police, Surfside, Fla.
Francis A. Rogers, Dade County Tax Payers' Assoc., 7114 Collins Ave., M. B.
Dr. J. A. Tucker, Dade County Tax Payers' Assoc., 7114 Collins Ave., M. B.
Mrs. Willie Rita Whitener, c/o Harrison Photo Lab., 2930 N. W. 7th Ave., Miami.

returnable before the judges of the above named Court at the Court House in Miami, Dade County, Florida, on the 4th day of April, A. D. 1944, at the hour of 2:30 P. M. o'clock, and oblige.

H. Frost Bailey, Asst. State Attorney.

[fol. 163] On April 3rd, A. D. 1944 Witness Subpoena was filed in the words and figures as follows, to-wit:

Witness Subpoena—Civil

IN THE NAME OF THE STATE OF FLORIDA

84054

STATE OF FLORIDA,
County of Dade, ss:

To All and Singular the Sheriffs of the State of Florida:

You are hereby requested to summon A. M. Dewey, J. M. Dunne, Charles Robbins, Deputy U. S. Marshal, U. S. Marshal's Office; Lt. C. O. Huttoe, Miami Police Dept. personally to be and appear before the Judges of our Circuit Court of the Eleventh Judicial Circuit of the State of Florida, at the Court House in Miami on the 4th day of April, A. D. 1944, at 2:30 P. M., to testify in behalf of the State in a certain suit pending in said Court, wherein State of Florida ex rel. Stanley Milledge, etc. is Plaintiff and Brook Club, Inc. et al., Defendant, and herein fail not under penalty of law.

Witness, the Honorable George E. Holt, Judges, as also E. B. Leatherman, Clerk, and the Seal of said Court at the Court House in Miami, Florida, this 30th day of March, A. D. 1944.

E. B. Leatherman, Clerk of the Circuit Court, by Wm. W. Stocking, Deputy Clerk. (Circuit Court Seal.)

Stanley Milledge, State Attorney.

SHERIFF'S OFFICE

Filed May 30 1944 4 25 P. M. Dade County, Florida

[fol. 164] (The following endorsement appears in pencil on the reverse side of Subpoena.)

No service on Dunne or Dewey, both left Miami sometime ago. Now living in the North. 3-31-44.
Served Robbins & Huttoe 3-31-44 2 M

1 40
50
25
40

2 55

H. Cheetham.

On April 4th, A. D. 1944 Witness Subpoena was filed in the words and figures as follows, to-wit:

Witness Subpoena—Civil

In the Name of the State of Florida

64054

State of Florida,
County of Dade, ss:

To All and Singular the Sheriffs of the State of Florida:

You are hereby requested to summon:

Harry McLeod, 9199 Collins Avenue, Surfside, Fla.
William Maher, 4630 Pine Tree Drive, Miami Beach, Fla.
Ray Semmes, 4601 North Bay Road, Miami Beach, Fla.,

[fol. 165] personally to be and appear before the Judges of our Circuit Court of the Eleventh Judicial Circuit of the State of Florida, at the Court House in Miami on the 4th day of April, A. D. 1944, at 2:30 P. M., to testify in behalf of the State in a certain suit pending in said Court, wherein State of Florida ex rel. Stanley Milledge, etc. is Plaintiff, and The Brook Club, Inc. et al. Defendant, and herein fail not under penalty of law.

Witness, the Honorable George E. Holt, as also E. B. Leatherman, Clerk, and the Seal of said Court at the Court House in Miami, Florida, this 30 day of March, A. D. 1944.

E. B. Leatherman, Clerk of the Circuit Court, by Wm. W. Stocking, Deputy Clerk. (Seal.)

Stanley Milledge, State Attorney.

Filed Sheriff's Office, 1944 Ma 30 P M 4 25.

(The following endorsement appears in pencil on the reverse side of Subpoena.)

No service on Semmes, living in Baltimore, Md. 3-31-44.
No service on Harry McLeod, out of Miami. 4-3-44.
Served William Maher. 4-3-44. 16 m.

1.05
25
2.00
30

3.60

H. Cheetham.

[fol. 166] On April 4th, A. D. 1944 Witness Subpoena was filed in the words and figures as follows, towit:

Witness Subpoena—Civil

In the Name of the State of Florida

State of Florida,
County of Dade, ss:

To All and Singular the Sheriffs of the State of Florida:

You are hereby requested to summon F. W. Hackett, Chief of Police, Surfside, Fla., Francis A. Rogers, Dade Co. Tax Payers' Assoc. 7114 Collins Ave., Miami Beach, Dr. J..A. Tucker, Dade Co. Tax Payers' Assoc. 7114 Collins Ave., Miami Beach, Mrs. Willie Rita Whitener, c/o Harrison Photo Lab. 2930 N. W. 7 Ave., Miami, personally to be and appear before the Judges of our Circuit Court of the Eleventh Judicial Circuit of the State of Florida, at the

Court House in Miami on the 4th day of April, A. D. 1944, at 2:30 P. M., to testify in behalf of the State in a certain suit pending in said Court, wherein State of Florida ex rel. Stanley Milledge, etc. is Plaintiff and The Brook Club, Inc. et al., Defendant, and herein fail not under penalty of law.

Witness, the Honorable George E. Holt, Judges, as also E. B. Leatherman, Clerk, and the Seal of said Court at the Court House in Miami, Florida, this 30th day of March, A. D. 1944.

E. B. Leatherman, Clerk of the Circuit Court, by Wm. W. Stocking, Deputy Clerk. (Seal.)

Stanley Milledge, State Attorney.

[fol. 167] Filed Sheriff's Office, 1944 Ma 30 P M 4 25. Dade County, Florida.

(The following endorsement appears in pencil on the reverse side of Subpoena.)

Served Willie R. Whitener. 6 M 3-31-44.
Served Hackett, Rogers and Tucker. 4-1-44.
26 M.

1.40
1.00
3.25
.40

6.05

H. Cheetham.

On March 30th, A. D. 1944, Notice of Hearing was filed in the words and figures as follows, to-wit:

[Caption omittede]

NOTICE OF HEARING ON APPLICATION FOR TEMPORARY RESTRAINING ORDER

[fol. 168] To: The Brook Club. Inc.—Officers; Ray Semmes, President, 4601 North Bay Road, Miami Beach; A. M. Dewey, Vice-President; J. M. Dunne, Secretary; and Harry McLeod, 9199 Collins Avenue, Surfside, Florida; and William Mather, 4630 Pine Tree Drive, Miami Beach, Florida.

You Are Hereby Notified that the Relator in the above styled cause will apply to the Honorable George E. Holt,

one of the Judges of the above styled Court, for a temporary restraining order on Tuesday, March 28, 1944, at 2:30 P. M. in the chambers of Judge Holt in the Dade County Court House.

Dated at Miami, Florida, this 23rd day of March, A. D. 1944.

Stanley Milledge, as State Attorney in and for the Eleventh Judicial Circuit of Florida.

Received the foregoing notice this — day of March, A. D. 1944.

The Brook Club, Inc., by ——.—— (Name and Title), Harry McLeod, William Maher.

Filed Sheriff's Office 1944 Ma. 23 P. M. 3 04 Dade County, Florida. No Service. .60¢. D. C. Coleman, Sheriff, Dade County, Florida, by H. Cheetham, D. S.

[fol. 169] On April 3rd, A. D. 1944, Motion to Dismiss Bill of Complaint was filed in the words and figures as follows, to-wit:

[Caption omitted]

MOTION TO DISMISS BILL OF COMPLAINT

The defendants jointly and severally move the Court to dismiss the bill of complaint filed herein because:

1. It is not alleged or shown in or by the bill of complaint that the public officials of Dade County, Florida are not discharging, or have failed, neglected or refused to discharge, their duties in the enforcement of the criminal laws of the State of Florida or in the prosecution of violators of such laws, and it is not alleged or shown in or by the bill that ordinary legal methods and means would not be effective in compelling obedience to statutes forbidding the creation and maintenance of public nuisances and in abating the alleged public nuisance mentioned and described in the bill.

2. The Court may and should decline the exercise of its equitable jurisdiction to abate the alleged public nuisance inasmuch as it is not alleged or shown in or by the bill that the public officials are not discharging, or have failed, neg-

lected or refused to discharge, their duties in the enforcement of the criminal laws of the State of Florida or in the [fol. 170] prosecution of violators of such laws, and it is not alleged or shown in or by the bill that ordinary legal methods and means would not be effective in compelling obedience to statutes forbidding the creation and maintenance of public nuisances and in abating the alleged public nuisance.

3. It is not shown in or by the bill that there is any necessity for the exercise by the Court of its equitable jurisdiction to abate the alleged public nuisance.

4. The public officials of Dade County, Florida, by discharging their duties and by the employment of ordinary legal methods and means, could and should effectively abate the alleged public nuisance, if it exists.

5. There is an adequate legal remedy.

Ernest E. Roberts, Vincent C. Giblin, Solicitors for Defendants, by Vincent C. Giblin, of Counsel.

On April 4th A. D. 1944 Notice of Hearing was filed in the words and figures as follows, to wit:

NOTICE OF HEARING ON APPLICATION FOR TEMPORARY RESTRAINING ORDER

[fol. 171] To: The Brook Club, Inc., Ray Semmes, President, 4601 North Bay Road, Miami Beach, Florida; Harry McLeod, 9199 Collins Avenue, Surfside, Florida; William Maher, 4630 Pine Tree Drive, Miami Beach, Florida, and Earnest Roberts, as Attorney for the Above Named Defendants, Security Building, Miami, Florida.

You Are Hereby Notified that the relator in the above styled cause will apply to the Honorable George E. Holt, one of the Judges of the above styled Court, for a temporary restraining order on Tuesday, March 28, 1944, at 2:30 P. M. in the chambers of Judge Holt in the Dade County Court House.

Dated at Miami, Florida, this 24th day of March, A. D. 1944.

Stanley Milledge, as State Attorney in and for the Eleventh Judicial Circuit of Florida.

AFFIDAVIT OF MAILING

STATE OF FLORIDA,
County of Dade, ss:

On this day personally appeared before me, the undersigned authority, Billie Gillespie, who being first duly sworn says that she is employed in the office of Stanley Milledge, State Attorney for the Eleventh Judicial Circuit of Florida; that on March 24, 1944, she served a true copy of the above and foregoing Notice on each of the above defendants and their above named attorney by placing same in envelopes [fol. 172] addressed to said persons at their respective addresses shown above; that she placed on said envelopes sufficient uncanceled United States postage to carry same to their destination, and placed same in the United States mail at the main Post Office, Miami, Florida, prior to 5:30 P. M. on said date.

Billie Gillespie.

Subscribed and sworn to before me this 24th day of March, A. D. 1944. Annabel McGraw, Notary Public, State of Florida. My commission expires May 2, 1945. (N. P. Seal.)

On April 5th, A. D. 1944 Order Denying Motion to Dismiss was filed and on the 5th day of April, A. D. 1944 was duly recorded in Chancery Order Book 685, on page 104, in the words and figures as follows, to-wit:

[Caption omitted]

[fol. 173] ORDER DENYING MOTION TO DISMISS

This cause was today heard on the motion of the defendants to dismiss the bill of complaint filed in the cause. The Court has heard the argument of counsel for the respective parties on the motion and is duly advised in the premises.

It is Ordered, Adjudged and Decreed that the said motion be, and it is, denied.

It is further Ordered, Adjudged and Decreed, on the oral application of the defendants, that all further proceedings in the cause be, and they are, stayed for a period of ten days from and after the date of this order so that within such

period the defendants may apply to the Supreme Court of Florida for a writ of certiorari for the purpose of having the appellate court review this order.

Done and Ordered in chambers at and in the City of Miami, Dade County, Florida, April 4, 1944.

George E. Holt, Circuit Judge.

[fol. 174] On April 7th A. D. 1944 Application for Supersedeas and Stay was filed in the words and figures as follows, to-wit:

[Caption omitted]

APPLICATION FOR SUPERSEDEAS AND STAY

The defendants represent and show to the Court that on April 4, 1944 the Court made in the cause its order (which was recorded on April 5, 1944 in Chancery Order Book 685, at page 104) in and by which the defendants' motion to dismiss the bill of complaint filed in the cause was denied; that in and by the said order all further proceedings in the cause were stayed for a period of ten days from and after the date of the said order (April 4, 1944) "so that within such period the defendants may apply to the Supreme Court of Florida for a writ of certiorari for the purpose of having the appellate court review" the order denying the said motion, and that such stay will expire, unless extended, on April 14, 1944.

The defendants further represent and show to the court that the defendants' solicitors, since the making of the said order, having been diligently and continuously engaged in the preparation of their petition for certiorari, a transcript of the record of the proceedings in the cause and an accompanying brief in support of the petition; that on Monday, April 10, 1944, the petition, the transcript and the brief will be filed in the Supreme Court of Florida; and that on or before April 10, 1944, the State Attorney will be furnished a copy of such petition, a copy of such transcript and a copy [fol. 175] of such brief.

The defendants further represent and show to the Court that (by virtue of the provisions of Rule 28 (c) of the Supreme Court rules) the State Attorney will have ten days

after he is furnished a copy of such brief within which to file his brief in opposition; but the State Attorney has orally stated to counsel for the defendants that he will file his brief in the Supreme Court before Monday, April 17, 1944, and he and counsel for the defendants have orally agreed, subject to the approval of the Supreme Court, that the cause shall be orally argued before the Supreme Court on Monday, April 17, 1944, at 9:30 o'clock in the afternoon, or as soon thereafter as counsel may be heard.

The defendants further represent and show to the Court that the matter cannot and will not be heard by the Supreme Court before Monday, April 17, 1944.

The defendants, therefore, apply, under and pursuant to the provisions of Rule 35(f) of the Supreme Court rules for the entry herein by the Court of an order in and by which the Court shall grant a supersedeas and stay on the defendants' giving a good and sufficient bond which shall be conditioned that their petition for certiorari shall be duly presented to the Supreme Court within twenty days and that they shall pay all costs, damages and expenses occasioned by reason of the stay of proceedings in the event the order of which a review is sought shall not be quashed, modified or reversed, and which shall contain such further conditions as may be fixed by the Court.

April 7, 1944.

Ernest E. Roberts, Vincent C. Giblin, Solicitors for Defendants, by Vincent C. Giblin.

[fol. 176] On April 17th, A. D. 1944 Praecipe for Witness Subpoena was filed in the words and figures as follows, to-wit:

[Caption omitted]

PRAECIPE FOR WITNESS SUBPOENA

The Clerk of the above named Court will please issue a witness subpoena in the above entitled cause directed to the following:

William M. Hurley, 515 N. E. 123 Street, North Miami, returnable before the Judges of the above named Court at the Court House in Miami, Dade County, Florida; on the 20

day of April, A. D. 1944, at the hour of ten o'clock A. M., and oblige.

H. Frost Bailey, Asst. State Attorney.

On April 26th, A. D. 1944, Witness Subpoena was filed in the words and figures as follows, to-wit:

[fol. 177] In the Name of the State of Florida

84064

Witness Subpoena—Civil

State of Florida,
County of Dade:

To All and Singular the Sheriffs of the State of Florida:

You are hereby requested to summon William M. Hurley, 515 N. E. 123 Street, North Miami, personally to be and appear before the Judges of our Circuit Court of the Eleventh Judicial Circuit of the State of Florida, at the Court House in Miami on the 20 day of April A. D. 1944, at ten A. M., to testify in behalf of the State in a certain suit pending in said Court, wherein State of Florida is Plaintiff and The Brook Club, Inc., Defendant, and herein fail not under penalty of law.

Witness, the Honorable Paul D. Barns, Ross Williams, Richard H. Hunt, George E. Holt, Marshall C. Wiseheart, and Arthur Gomez, Judges, as also E. B. Leatherman, Clerk, and the Seal of said Court at the Court House in Miami, Florida, this 17 day of April A. D. 1944.

E. B. Leatherman, Clerk of the Circuit Court, by Wm. W. Stocking, Deputy Clerk.

Stanley Milledge, State Attorney.

Sheriff's Office

Filed Ap. 17, 1944, 11:50 A. M., Dade County, Florida.

(The following endorsement appears in pencil on the reverse side of Subpoena:)

[fol. 178] Served in person 4-17-44. 2 miles. 95.

D. C. Coleman, Sheriff of Dade County, Fla., by Geo. F. Holly, Deputy Sheriff.

On April 19th, A. D. 1944, Supreme Court Order Denying Petition For Writ Of Certiorari was filed, and on the 20th

day of April, A. D. 1944 was duly recorded in Chancery Order Book 687 on page 56, in the words and figures as follows, to-wit: [Caption omitted]

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs and the record having been inspected,

It Is Ordered that said Petition be and the same is hereby denied.

Supreme Court of the State of Florida. (Seal.)

A true copy Teste: Guyte P. McCord, Clerk, Supreme Court.

[fol. 179] On April 19th, A. D. 1944 Praecipe for Witness Subpoena was filed in the words and figures as follows, to-wit: [Caption omitted]

PRAECIPE FOR WITNESS SUBPOENA

The Clerk of the above named Court will please issue a witness subpoena in the above entitled cause directed to the following: Irene Dunne, May E. Potter, J. M. Battle returnable before the Judges of the above named Court at the Court House in Miami, Dade County, Florida, on the 20th day of April, A. D. 19—, at the hour of ten A. M. o'clock and oblige.

Stanley Milledge, State Attorney.

On April 26th, A. D. 1944 Witness Subpoena was filed in the words and figures as follows, to-wit:

Witness Subpoena—Civil

STATE OF FLORIDA,
County of Dade, ss:

IN THE NAME OF THE STATE OF FLORIDA

84054

[fol. 180] To All and Singular the Sheriffs of the State of Florida:

You are hereby requested to summon Irene Dunne, May E. Potter, J. M. Battle, all of them listed as being at Florida National Bank Building, as of 12/8/38, personally

to be and appear before the Judges of our Circuit Court of the Eleventh Judicial Circuit of the State of Florida, at the Court House in Miami on the 20th day of April, A. D. 1944, at 10 A. M., to testify in behalf of the State in a certain suit pending in said Court, wherein State of Florida is Plaintiff, and The Brook Club, Inc., et al. are Defendants, and herein fail not under penalty of Law.

Witness, the Honorable George E. Holt, Judges, as also E. B. Leatherman, Clerk, and the Seal of said Court at the Court House in Miami, Florida, this 19th day of April, A. D. 1944.

E. B. Leatherman, Clerk of the Circuit Court, by Wm. W. Stocking, Deputy Clerk.

Stanley Milledge, State Attorney.

(The following endorsement appears in pencil on the reverse side of the Subpoena.)

Served Potter, Dunne 4-20-44 2 miles, Battle in the Army.

1.06
.50
.25
.30

2.10

Sheriff of — County, Fla., by Tolbert, Deputy Sheriff.

[fol. 181] On April 26th, A. D. 1944 Affidavit of Mailing was filed in the words and figures as follows, to-wit:

[Caption omitted]

AFFIDAVIT OF MAILING

STATE OF FLORIDA,
County of Dade:

On this day personally appeared before me, the undersigned authority, Annabel Ebright, who being by me first duly sworn deposes and says that she is employed in the office of Stanley Milledge, State Attorney for the Eleventh Judicial Circuit of Florida in and for Dade County; that

on the 26th day of April, A. D. 1944 she served a true and exact copy of the restraining order entered in the above styled cause signed by Honorable George E. Holt, Circuit Judge, dated April 25, 1944, upon Ernest E. Roberts and Vincent C. Giblin, attorneys for the defendants herein, by placing said copy in an envelope directed to Ernest E. Roberts and Vincent C. Giblin, Attorneys at Law, Ingraham Building, Miami, Florida, and placing on said envelope sufficient uncancelled United States postage to carry same to its destination.

Anabel Ebright.

Sworn to and subscribed before me, at Miami, Florida, this 26th day of April, A. D. 1944. Rhona Mixon, Notary Public, State of Florida at Large. My Commission expires: 4-3-48. (N. P. Seal.)

[fol. 182] On April 26th, A. D. 1944 an Order was filed and on the 27th day of April, A. D. 1944 was duly recorded in Chancery Order Book 687 on Page 417, in the words and figures as follows, to-wit:

[Caption omitted]

ORDER

The above-styled cause came on to be heard this day upon the application of the plaintiff for a temporary restraining order, and the Court having considered the evidence submitted by the Plaintiff, none having been offered by the defendants hereinafter named, and having heard argument of counsel for the respective parties;

It Is Ordered, Adjudged and Decreed that until the further order of this Court the defendants The Brook Club, Inc., a corporation, Harry McLeod and William Maher are enjoined and restrained from conducting, maintaining, or operating on the premises described in the bill of complaint, known as the Brook Club, any game of roulette, craps, chemin-de-fer, or other unlawful game of chance, and from placing or maintaining on said premises any equipment, apparatus or facilities designed and intended for use in operation of or engaging in any unlawful game of chance, and that the said defendants be temporarily enjoined and restrained as aforesaid from so doing, directly or indirectly,

by any person, persons, firm, corporation, means, device or [fol. 183] agency, or by any agents, servants or employees.

Done and Ordered in Chambers at Miami, Dade County, Florida, this 25th day of April, A. D. 1944.

George E. Holt, Circuit Judge.

On May 1st, A. D. 1944 Defendants' Answer was filed in the words and figures as follows, to-wit:

[Caption omitted]

DEFENDANTS' ANSWER

Answering the bill of complaint herein, the defendants jointly and severally say:

1. The defendants deny, and say it is not true, that at the time of the institution of this suit, or for some time prior to the institution of this suit, or at any time since the institution of this suit, there was conducted or maintained in the building or on the premises mentioned and referred to in the bill of complaint a public nuisance of the nature and character set forth in the said bill, or a public nuisance of any nature or character.

2. The defendants say that the building mentioned and referred to in the bill of complaint is located on lots 1, 2, [fol. 184] 3, 4, 5 and 6 and lots 28, 29 and 30 of block 5 of Altos Del Mar No. 6, the subdivision mentioned and referred to in the bill. The defendants deny and say it is not true, that the building and the premises mentioned and described in the bill were maintained, at the time of the institution of this suit, or at any other time, primarily for the purpose of maintaining and operating an unlawful gambling house. The defendants say that such property is not now and has never been maintained primarily as or for an unlawful gaming house, but that, on the contrary, the building mentioned and referred to in the bill has been occupied and used primarily for the purpose of operating and maintaining therein a highclass exclusive restaurant, a dancing and entertainment salon and a bar, and that such purpose has at all times been the dominant and principal purpose for which the said building has been used. The individual defendants, as lessees, in the operation of their business, adopted and have employed a "club" plan for the purpose of enabling them to exclude from the said restaurant and

bar and other facilities undesirable and objectionable persons; and, as a result of the adoption and use of such plan, its patrons and guests have been and are only persons of good repute.

3. The individual defendants, as lessees, operated the said restaurant, dancing and entertainment salon and bar for a considerable period of time during the winter season of 1943-1944. Such business was conducted from approximately January 1, 1944 until April 1, 1944. The defendants admit that during such period, at the special instance and request of certain of the patrons of The Brook Club, a [fol. 185] certain room on the south side or wing of the said building was opened for gaming purposes for the pleasure and diversion of such patrons, but that no gambling was conducted in the said room or wing, or elsewhere in the said building, except on two widely separated dates during the said period of the club's operation. On such two occasions the games of chance were not open to the public, but only to a limited number of the patrons of the club. The defendants deny, and say it is not true, that the establishment is a well known gambling house. They deny, and say it is not true, that it is a matter of common knowledge that such establishment is a gambling house. They deny, and say it is not true, that such establishment, is reputed to be an unlawful gambling house. They deny, and say it is not true, that the defendants, or any of them, "from and after about January 13, 1944" to the date of the institution of this suit, continuously conducted and maintained the property mentioned and described in the bill of complaint as a gambling house in defiance of the laws of the State of Florida. The defendants reiterate their previous averment that only on two occasions during the months of January, February and March, 1944 were any games of chance conducted on the mentioned premises. One of such occasions was, as indicated in the bill of complaint, March 18, 1944. The defendants deny, and say it is not true, that the operation of The Brook Club constitutes, or has constituted, an unlawful public nuisance or that such operation tends, or has tended, to bring Dade County or the communities within such county into national disrepute. The Brook Club is not in a populous neighborhood. No private person has made complaint of any injury sustained or likely to be sustained [fol. 186] by himself or his property by reason of the

operation of such club. The Sheriff and other law enforcement officials of Dade County, Florida have not refused to perform or discharge their duties in the enforcement of the laws against gambling *and gambling* and the laws forbidding the creation and maintenance of public nuisances; and the ordinary legal methods and means are effective in compelling obedience to such laws. Therefore, no necessity exists for invoking the aid of a court of equity in this suit.

4. The defendants deny, and say it is not true, that, unless restrained by this Court, the defendants, or any of them, will maintain any public nuisance on the premises mentioned and described in the bill of complaint.

Vincent C. Giblin, Solicitor for Defendants.

On August 14th, A. D. 1944 Motion for Decree on Pleadings was filed in the words and figures as follows, to-wit:

[Caption omitted]

MOTION FOR DECREE ON PLEADINGS

The defendants, The Brook Club, Inc., a corporation, Harry McLeod and William Maher, jointly and severally [fol. 187] move the Court for the entry herein of a final decree on the pleadings.

The defendant-movants, as grounds for their motion, represent and show to the Court (a) that the bill of complaint was filed herein and the cause instituted on March 22, 1944; (b) that the defendants (after their joint and several motion to dismiss the bill of complaint had been denied) filed their joint and several answer to the bill of complaint on May 1, 1944; (c) that no counterclaim was filed herein by the plaintiff or relator; (d) that, therefore (by virtue of the provisions of Section 63.39 of the Florida Statutes of 1941), the cause has been at issue since May 11, 1944; (e) that the cause has not been set for trial before the Court; (f) that no order fixing the time within which the testimony of the parties should be taken has been entered; (g) that no testimony has been taken and no proofs have been submitted during the time which has elapsed since the cause came to issue; (h) that more than three months have elapsed since

the cause came to issue; (i) that the time for the taking of testimony has not been extended by order of the Court or by the written or oral stipulation of the parties; (j) that no motion or application for the entry of an order extending the time for the taking of testimony has been filed by the plaintiff or relator or by any of the defendants; (k) that no proper or sufficient reason or cause has been or can be assigned by the plaintiff for an extension of time for the taking of testimony; and (l) that, therefore (by virtue of [fol. 188] the provisions of Section 63-46 of the Florida Statutes of 1941), the time for the taking of testimony having expired, the defendants, and each of them, are entitled to the entry herein of a final decree on the pleadings.

August 14, 1944.

Ernest E. Roberts, Vincent C. Giblin, Solicitors for Defendants, by Vincent C. Giblin, Of Counsel.

On October 24th, A. D. 1944 Notice was filed in the words and figures as follows, to-wit:

[Caption omitted]

NOTICE

To The Honorable Stanley Milledge, the State Attorney, of and for the Eleventh Judicial Circuit of Florida and the relator in the above entitled cause;

You will please take notice that on Tuesday, October 31, 1944, at two o'clock in the afternoon of the said day, or as soon thereafter as counsel may be heard, the defendants in the above entitled cause, by and through their undersigned solicitors, will call up for argument and disposition before the Honorable Marshall C. Wisecheart, [fol. 189] one of the Judges of the above styled Court, in his chambers in the Court House of Dade County, Florida, at Miami, the said defendants' motion (filed in the said cause on August 14, 1944) for the entry in the said cause of a final decree on the pleadings.

October 24, 1944.

Ernest E. Roberts, Vincent C. Giblin, Solicitors for Defendants, by Vincent C. Giblin, Of Counsel.

The receipt by the undersigned on October 24, 1944 of a true and correct copy of the above and foregoing notice is hereby acknowledged.

October 24, 1944.

Stanley Milledge, State Attorney of and for the Eleventh Judicial Circuit of Florida and the Relator in the Entitled Cause.

[fol. 190] On October 31st, A. D. 1944 Final Decree was filed and on the 1st day of November, A. D. 1944 was duly recorded in Chancery Order Book 704, on page 251, in the words and figures as follows, to-wit:

[Caption omitted]

FINAL DECREE ON PLEADINGS

This cause was today heard, after due notice, on the motion (filed herein on August 14, 1944) of the defendants for the entry of a final decree on the pleadings. The Court has duly considered the matter and is fully advised in the premises.

It is accordingly Ordered, Adjudged and Decreed that the said motion be, and it hereby is, granted; and that the bill of complaint (filed herein on March 22, 1944) be, and it hereby is, dismissed.

Done And Ordered in Chambers at and in the City of Miami, Dade County, Florida, October 31, 1944.

Marshall C. Wiseheart, Circuit Judge.

[fol. 191] STATE OF FLORIDA,
County of Dade, ss:

I, E. B. Leatherman, Clerk of the Circuit Court, in and for the County of Dade, State of Florida, Do Hereby Certify that the foregoing pages numbered from one to 42, inclusive, contain a correct transcript of the record of the Judgment in the case of State Of Florida, Ex Rel.: Stanley Milledge, as State Attorney for the Eleventh Judicial Circuit of Florida, plaintiff, against The Brook Club, Inc., et al., Defendants, and a true and correct recital and

copy of all such papers and proceedings in said cause, as appears from the records and files of my office.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of said Circuit Court on this the 21 day of November, A. D. 1944.

E. B. Leatherman, Clerk of the Circuit Court, by L. G. Woodard, Deputy Clerk. (Circuit Court Seal.)

[fol. 192] IN THE CIRCUIT COURT IN AND FOR THE COUNTY OF DADE

ORDER ALLOWING ATTORNEYS TO APPEAR AS AMICI CURIAE—December 8, 1944

This matter coming on before this Court on November 28, 1944, and it having been made to appear that the Honorable F. M. Hudson, James M. Carson and M. L. Mershon, all of the Miami bar, have, at the request of the Committee on Courts and the Committee on Public Relations of the Dade County Bar Association, sought leave to appear herein as amici curiae;

It Is Thereupon Ordered And Adjudged that the said attorneys be and they are hereby granted leave and permission to present their views as amici curiae.

Done And Ordered on this the 6th day of December, 1944, as of and for the 28th day of November, 1944.

Marshall C. Wiseheart, Paul D. Barns, Circuit Judges.

[fol. 193] IN THE CIRCUIT COURT IN AND FOR THE COUNTY OF DADE

ORDER DENYING MOTION TO QUASH CITATION—December 9, 1944

This cause came on to be heard upon motion to quash the citation heretofore issued in this case.

To begin with it should be noted:

1. That the initial statement at the opening of the hearing herein on November 28 was that the citing judges offered to retire if the respondents would suggest it and believed

they might receive a more fair trial from another judge. Respondents replied that they had no suggestion to make:

2. That the respondents have been cited on a charge of making an unfair and untrue report of court proceedings. and in turn of making false imputations against the court and its judges as such based upon respondents' own unfair and untrue report.

The rule was issued by the Court itself and was not based upon any information filed by the state attorney, for the reason that the Court was criticized in and by the editorial and cartoon attached to the rule for deciding the cases upon questions of law adversely to the contentions of the state attorney. Since the respondents admit the publications this dissipates the procedural objection relating to the means [fol. 194] by which these proceedings were initiated.

The procedure adopted, however, has been recognized and employed by the Supreme Court of Florida.

In Re Hayes, 72 Fla. 558, 73 So. 362, L. R. A. 1917 D, 192, Ann. Cas. 1918, p. 936, 387, Vol. 3.

From the opinion of the Supreme Court of Florida in the Hayes case, we quote the following part:

"Publishers of newspapers have the right, but no higher right than others, to bring to public notice the conduct of the courts, provided the publications are true and fair in spirit. The liberty of the press secures the privilege of discussing in a decent and temperate manner, the decisions and judgments of a court of justice, but the language should be that of fair and honorable criticism, and should not go to the extent of assigning to any party or the court false or dishonest motives. There is no law to restrain or punish the freest expressions of the disapprobation that any person may entertain of what is done in or by the courts. Under the right of freedom of speech and of the press the public have a right to know and discuss all judicial proceedings, *but this does not include the right to attempt, by wanton defamation, groundless charges of unfairness and stubborn partisanship to degrade the tribunal and impair its efficiency.* 6 R. C. L. pages 254-512. 'The liberty of the press is subordinate to the independence of the judiciary, and it is not expedient

that any class in the community should be privileged to attack the courts with the view to interfere with the [fol. 195] rights of litigants or to embarrass the administration of justice. Liberty of the press must not be confounded with license or abuse of that liberty.' 6 R. C. L. p. 510. Our statute provides that 'every court shall have power to punish contempts against it,' etc. • • •

"The conduct of unprincipled men, traducing the institutions of a state to the end that their political ambitions may be realized, is an unsafe guide for the young man who desires to succeed in the honored field of journalism, and is an example too degrading to be imitated and too vicious to be condoned by the self-respecting journalist. He cannot fan the flames of suspicion and distrust by printing a false article, relating to a cause then pending in court, and imputing to that court a lack of integrity, without violating the law and transgressing every conception of decency. Newspaper editors and reporters have the rights to publish the proceedings of the courts, including the pleadings, proofs, and remarks of the court and counsel, yet they must see to it that they *publish them truthfully and correctly.* But they have no right to give publication to the impressions made by such court proceedings upon *their minds,* by the use with reference to the court itself of such contemptuous and opprobrious adjectives as [fol. 196] that the court was 'partisan,' 'stubborn,' 'hostile to counsel,' and 'ignorant.'" (Emphasis added.)

Hayes was held in contempt of ths Supreme Court for false newspaper comment directed against that court.

Clear and Present Danger

Most of the argument of the defendants was based upon the decision of the Supreme Court of the United States in 1941, in the case of Bridges vs. California, 314 U. S. 252-305, 62 Sup. Ct. Rep. 190, 86 Law Ed. 192.

At the outset of his opinion Mr. Justice Black drew attention to the fact that the California statutes did not provide for punishment for contempt. Further, the language used by the newspaper in the case of Bridges vs.

California did not attempt to impute to the Court any improper, malicious or corrupt motive.

Heretofore the standard fixed for contempt has been that of the "tendency of the act to impede, interfere with or frustrate a fair administration of justice."

Much ado seems to be made about the "clear and present danger" qualifications announced in the Bridges case. It does not appear to us that the qualification of "tendency" by the Bridges case is as far reaching as counsel would lead us to believe. The cases on contempt show that the courts have usually applied the law of contempt as announced in the Bridges case even though the phrase "clear and present danger" may be new.

Tendency, like negligence, is not a thing—it is relative. The circumstances determine whether the act presents a clear and present danger tending to interfere with and [fol. 197] impede or frustrate a fair administration of justice. The moral character or stability or resistance of the particular judge involved might be a circumstance, but not necessarily the deciding factor.

Public Policy—Statutory Declarations

The Hayes case, above cited, points out, however, that power to punish for contempt existed at Common Law. From the beginning we have had in Florida a statute which makes the English Common Law the law of Florida, which statute reads as follows:

> "The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this state."
>
> 1941 Florida Statutes, Sec. 2.01.

Besides that general statute, we have specific statutes, some conferring and some recognizing the right of courts to punish for contempt. Sec. 38.22 and 38.23 of the Florida Statutes of 1941 read as follows:

> "Every court may punish contempts against it, but the punishment imposed by a justice of the peace shall

not exceed twenty dollars fine or twenty-four hours imprisonment."

"A refusal to obey any legal order, mandate or de-
[fol. 198] cree, made or given by any judge either in term time or in vacation relative to any of the business of said court, after due notice thereof, shall be considered a contempt, and punished accordingly. But nothing said or written, or published, in vacation, to or of any judge, or of any decision made by a judge, shall in any case be construed to be a contempt."

It will be noticed that by these two sections there are two limitations imposed upon the power of courts to punish for contempt.

The first section limits the penalty that may be imposed by Justices of the Peace; the second section limits the power of courts to punish by contempt proceedings for anything said or written, or published, *in vacation*, to or of any judge, or of any decision made by a judge. This recognizes the power to punish for such contempts if committed in term time.

In addition to these statutes there is a specific statute, contained in the criminal procedure provisions, conferring jurisdiction to punish for contempt, just as in the exercise of civil jurisdiction, and providing that criminal courts of record shall have the same power in this respect as circuit courts.

"said courts, in the exercise of their criminal jurisdiction, may punish for contempts as in the exercise of their civil jurisdiction, and the criminal courts of record shall possess, in this respect, the same powers as the circuit courts."

1941 Florida Statutes, Sec. 932.03.

[fol. 199] *Cases Pending—When.*

For purposes of contempt:

"Proceedings are pending immediately the writ is issued, and as long as any proceedings can be taken; and it is usually necessary to constitute the offence of contempt that the comments complained of should appear during such pendency."

Oswald's Contempt of Court, p. 97.

"A cause is pending within the rule of contempt concerning libelous publications when it is still open for modification or rehearing."

In Re Nelson, 60 Pac. (2nd) 365. See also Providence Journal Co., 68 Atl. 428.

But as expressed by Judge Hand in Ex Parte Craig, 282 Fed. (text) 159, "the rule does not depend on formalities." This point was treated in 48 Harvard Law Review 886 (text) 890 which reads:

"There was some question for a time whether it was contempt to comment on a case after a person has been charged before the magistrate but before he had been committed for trial. In Rex vs. Parke the court had no hesitation in holding that it was, Wills, J., saying:

'It is true that in very nearly all the cases which have arisen there has been a cause actually begun, so that the expression, quite natural under the circumstances, accentuates the facts, not that the case has been begun, but that it is not at an end. That [fol. 200] is the cardinal consideration. It is possible very effectually to poison the fountain of justice before it begins to flow.'"

Freedom of the Press

The constitutional guarantee of freedom of the press must in the final analysis depend upon the courts of the land for its protection.

If the power claimed by the press under the constitutional provisions should be so far abused as to degrade the courts and to impair their efficiency and their ability or willingness to enforce constitutional rights, where then could the press, itself, look for its protection?

We have freedom of the press and freedom of speech expressly provided for in our constitutions and it has not been found necessary to expressly provide in them for "freedom of government." If the press has a social obligation it is at least no greater than that of the courts.

By freedom of the press is meant that books and newspapers may be published without leave of any governmental authority. It has not always been so. It does not

carry with it immunity to restraints for abuses of the privilege.

> *Freedom of the press is the liberty to print and publish without any previous leave of governmental authority, subject always to the consequences of the law.*
>
> "The inherent power of the courts to punish any publication calculated to interfere with the administration of justice is not restricted by the constitutional guar- [fol. 201] anties of liberty of the press, for liberty of the press is subordinate to the independence of the judiciary and the proper administration of justice. Liberty of the press must not be confounded with license or abuse of that liberty.
>
> 12 Am. Jur. 413.

In consideration of the premises, it is thereupon: Ordered and Adjudged that the said motion to quash be and the same is hereby denied.

Done and Ordered this 9th day of December, 1944.

Paul D. Barns, Marshall C. Wisecheart, Circuit Judges.

[fol. 202] In the Circuit Court In and For the County of Dade

Findings of Fact—December 15, 1944

(From the records of the ten cases referred to in the editorials and cartoon.)

The Court makes the following findings of fact from the Court's records and the Clerk's Minutes relative to those certain cases referred to in the citation heretofore issued herein, with the notation of the specific (and not the general) editorial comments relative to each case, and for purposes of convenience the photostatic copy of the Clerk's Minutes is attached and filed herewith.

"A"

State of Florida vs. Eight Defendants, in Cases Numbered 847, 850, 851, 855 and 856 Charged with Rape

Facts

The facts as reflected by the clerk's court records in and relating to said cause against defendants Dienger and Muir (#856) are that the defendants' attorney on October 30, 1944, filed a motion grounded on a complaint that "due to a mistake of the scrievenor, the indictment omits to charge that the defendant 'did feloniously ravish and carnally know' any particular female" and Assistant State Attorney Henry M. Jones representing "public interest" agreed in open court that the motion should be sustained and that he would want to overcome the defect in that indictment and [fol. 203] the same defect in the indictments against the other six defendants, all of which appears from the public records in said cases and the Clerk's Minutes of October 30, 1944, and as was witnessed by members of the press and bar then in attendance; said minutes in part reading as follows:

> "Counsel for the Defendants Dienger and Muir filed a motion to quash the above Indictment. The Court in pursuance of said motion and with the approval of the Assistant State Attorney, ordered said Indictment quashed and the Defendant remanded to the custody of the Bailiff.
>
> "Upon recommendation of the assistant State Attorney, the Court ordered the Indictments quashed in the following cases:
>
> State of Florida vs. John Kirby King, #847; State of Florida vs. Joseph Fulcher, #851; State of Florida vs. LeRoy La Fleur, also known as 'Buster La Fluer', #850; State of Florida vs. Robert Hubert, Willie D. Jerry, also known as 'Willie Williams', #855." Recorded in Book 146, page 271, Clerk's Minutes.

On the next day (within 24 hours) new indictments were returned against all eight defendants and their cases, on the same day, promptly set for trial as will appear by the court records and the Clerk's Minutes of October 31, 1944, hereto attached.

[fol. 204] *Editorial*

Instead of basing the editorial comment upon a fair or full report to the people upon such public proceedings, its semi-factual report is restricted to merely stating that:

> "Judge Paul D. Barns agreed with the defense that the indictments were not properly drawn. Back they went to the Grand Jury for re-presentation to the Court."

and with said editorial published the cartoon showing the "Defendant dismissed" and the public not being heard—when in truth and fact the public was heard through its assistant state attorney, who agreed that the action was proper.

The respondents did not report to the public that within twenty-four hours after the indictment against eight defendants were found defective by the assistant state attorney, defendants' attorney and the circuit judge and has been corrected by a grand jury, the prisoners had been arraigned by the Court and their cases set for trial by the Court; but instead respondents withheld all these facts except as above set forth.

"B"

The Brook Club Case

Chancery #84054

Facts

The facts reflected by the clerk's court records are that the Brook Club was instituted by the state attorney on March 22, 1944, and he procured from Judge Holt (although the case was filed in Judge Barns's division) a temporary restraining order therein on April 26, 1944. Thereafter the defendants filed their answer to the complaint on May 1, [fol. 205] 1944. Under the law the case was ready for trial (came at issue) on May 11, 1944, but it was never further prosecuted by the state attorney as was his privilege if he deemed it advisable.

On August 14, 1944, the defendant filed a motion for decree on pleadings and on October 24 the state attorney was notified of the hearing set for October 31, 1944, and the state attorney was notified of the hearing set for October 31, 1944, and the state attorney not making any motion for con-

tinuance or postponement of the hearing, Judge Wiseheart dismissed the case on the latter day.

Editorial

Notwithstanding the foregoing public proceedings, the semifactual report for editorial comment is merely that:

> "A padlock action against the Brook Club was initiated last spring before Judge George E. Holt who granted a temporary injunction. After five months, the case appeared Tuesday out of blue sky before Judge Marshall C. Wiseheart at the time State Attorney Milledge was engaged with the Grand Jury."

Notwithstanding that the defense filed its motion for a decree for want of prosecution on August 14, 1944 (after a lapse of 95 days) and not withstanding that the defense brought same on for hearing after a week's notice and after a lapse of 173 days since it came at issue and ready for prosecution by the state attorney's office, the report for editorial comment was that:

> "The judge dismissed the injunction against the club and its operators. The defense got delay when it [fol. 206] wanted and prompt decision from the court when it profited it."

"C"

Lipop-Teepee Club Case

Chancery #87365

According to the clerk's court records on September 23, 1944, this case was instituted by the state attorney to enjoin use of certain premises for gambling. On October 12, 1944, Judge Holt denied plaintiff's petition for a temporary injunction and in his order refused to give credence to five affidavits and the order entered included the language quoted in the editorial.

No further prosecution has been effected.

Paul D. Barns, Marshall C. Wiseheart, Circuit Judges.

[fol. 207] October 30th, A. D. 1944

Criminal Division of the Circuit Court opened 2:00 o'clock P. M. All officers present. Honorable Paul D. Barns, presiding; F. J. Gould, Deputy Clerk.

No. 856

STATE OF FLORIDA

vs.

NEWTON REID BLACK, THEODORE ROBERT DIENGER, JOHN REMER MUIR

Defendants in person present in open Court.

Counsel for the Defendants Deinger and Muir filed a motion to quash the above Indictment. The Court in pursuance of said motion and with the approval of the Assistant State Attorney, ordered said Indictment quashed and the Defendant remanded to the custody of the Bailiff.

Upon recommendation of the Assistant State Attorney, the Court ordered the Indictments quashed in the following cases:

No. 847

STATE OF FLORIDA

vs.

JOHN KIRBY KING

No. 851

STATE OF FLORIDA

vs.

JOSEPH FULCHER

No. 849

STATE OF FLORIDA

vs.

VANCE DIXON

No. 850

STATE OF FLORIDA

vs.

LEROY LA FLEUR, also Known as "Buster La Fleur"

No. 855

STATE OF FLORIDA

vs.

ROBERT HUBERT, WILLIE D. JERRY, also Known as "Willie Williams"

Defendant by counsel present in open Court.

[fol. 208] Defendant by his counsel waived arraignment and entered Plea of "Not Guilty."

Court set November 27th, 1944 as trial date of above cause.

No. 852

STATE OF FLORIDA

vs.

WILLIE WESTON

Defendant in person and with counsel present in open Court. Defendant waived arraignment and entered plea of "Not Guilty." Court set December 11th, 1944 as trial date of above cause. Court ordered the Defendant remanded to the custody of the Sheriff.

No. 853

STATE OF FLORIDA

vs.

THOMAS HARRIS

Defendant in person present in open Court. Defendant was arraigned and entered his plea of "Not Guilty." Court appointed Attorney Ben Hendricks to represent the Defendant.

Court set November 29th, 1944 as trial date of the above cause.

Court ordered the Defendant remanded to the custody of the Sheriff.

No. 854

STATE OF FLORIDA

vs.

JOHN L. WIGGINS

[fol. 209] Court set December 4th, 1944 as trial date of the above cause.

No. 857

STATE OF FLORIDA

vs.

LILLIAN G. FREAR

Defendant in person and with counsel present in open Court.

Defendant waived arraignment and entered plea of "Not Guilty."

Court set November 20th, 1944 as trial date of the above cause.

Court ordered the Defendant remanded to the custody of the Sheriff.

No. 859

STATE OF FLORIDA

vs.

ROY T. RUDEEN

Defendant in person and with counsel present in open Court. Defendant waived arraignment and entered plea of "Not Guilty." Court set December 6th, 1944 as trial date of the above cause.

Court ordered the Defendant remanded to the custody of the Sheriff.

Court recessed from Day to Day.

October 31st, A. D. 1944

Criminal Division of the Circuit Court opened 2:00 o'clock [fol. 210] P. M. All officers present. Honorable Paul D. Barns, presiding; F. J. Gould, Deputy Clerk; L. G. Woodard, Deputy Clerk.

The Grand Jury returned into Court. All were present, except Dudley B. Hartman.

They returned an Indictment against Delmer Butler for Rape. Court ordered the Indictment filed, Capias issued, and the Defendant held in custody without Bond until the further order of the Court.

They returned an Indictment against John Kirby King for Rape. Court ordered the Indictment filed, Capias issued and case set for trial November 15th, 1944.

They returned an Indictment against LeRoy LaFleur, also known as "Buster LaFleur" for Rape, Court ordered the Indictment filed, Capias issued and the Defendant held in custody without Bond until the further Order of the Court.

They returned an Indictment against Joseph Fulcher for Rape. Court ordered Indictment filed, Capias issued and the Defendant held in custody without Bond until the further order of the Court.

They returned an Indictment against Robert Hubert and Willie D. Jerry, also known as Willie Williams, for Rape. Court ordered the Indictment filed capias issued and the Defendants held in custody without Bond until the further order of the Court.

They returned an Indictment against Newton Reid Black, Theodore Robert Dienger, and John Remer Muir for Rape. [fol. 211] Court ordered Indictment filed, Capias issued and the Defendants held in custody without Bond until the further Order of the Court.

The Grand Jury having no further business to present retired from the Court room.

No. 855

STATE OF FLORIDA

vs.

ROBERT HUBERT, WILLIE D. JERRY, Also Known as "WILLIE WILLIAMS"

Defendants in person and with counsel present in open court. The Defendants were arraigned and entered Plea of "Not Guilty". Court set November 13th, 1944 as trial date of the above cause.

Court ordered the Defendants remanded to the custody of the Sheriff.

No. 847

STATE OF FLORIDA

vs.

JOHN KIRBY KING

Defendant by counsel present in open court.

Court set November 15th, 1944 as trial date of the above cause.

No. 856

STATE OF FLORIDA

vs.

NEWTON REID BLACK, THEODORE ROBERT DIENGER, JOHN REMER MUIR

Defendants in person present in open Court. Counsel for Defendants Theodore Robert Dienger and John Remer [fol. 212] Muir presented motion for Severance as to the Defendants above named, which was granted to the Court.

Thereupon the Defendants Theodore Robert Dienger and John Remer Muir waived arraignment and each entered plea of "Not Guilty".

Court set December 13th, 1944, as trial date of above cause.

Court ordered the Defendants remanded to the custody of the Sheriff.

Defendant Newton Reid Black in person present in open Court.

Court appointed Attorney Geo, Okell to represent the Defendant.

Defendant was arraigned and entered plea of "Not Guilty".

Court set December 20th, 1944 as trial date of above cause.

Court ordered the Defendant remanded to the custody of the Sheriff.

No. 850

STATE OF FLORIDA

vs.

LEROY LAFLEUR, Also Known as "Buster LaFleur"

Defendant in person and with counsel present in open Court.

Defendant was arraigned and entered Plea of "Not Guilty."

Court set December 18th as trial date of the above cause.

Court ordered the Defendant remanded to the custody of the Sheriff.

No. 851

STATE OF FLORIDA

vs.

JOSEPH FULCHER

Defendant in person and with counsel present in open Court.

[fol. 213] Defendant was arraigned and entered plea of "Not Guilty".

Court set January 8th, 1945 as trial date of the above cause.

Court ordered the Defendant remanded to the custody of the Sheriff.

No. 860

STATE OF FLORIDA

vs.

DELMER BUTLER

Defendant in person present in open Court.

Court appointed attorney Geo. Okell to represent the Defendant.

Defendant was arraigned and entered his plea of "Not Guilty."

Court set January 10th, 1945 as trial date of the above cause.

Court ordered the Defendant remanded to the custody of the Sheriff.

Court recessed from Day to Day.

[fol. 214] IN THE CIRCUIT COURT IN AND FOR THE COUNTY OF DADE

JUDGMENT OF GUILT IN CONTEMPT—December 18, 1944

This cause is ready for a final adjudication upon the original citation issued by the Court, the answer of the respondents, and the records in the ten cases identified in the citation, of which records the Court's "Findings of Facts" is a synopsis.

Answer of Respondents

In dealing with the respondents' sixty pages of answer we make the following observations:

1. The allegations of the answer inconsistent with the Court's records must be taken to be conclusively disproved by the records of the Court.

2. Since the meaning and import of the editorials and cartoon are unambiguous, the allegations of the answer which attempt to deny the plain meaning of the cartoon and the words used in the editorials must be ignored.

3. The subsequent Grand Jury report can not avail the respondents anything since it is in nowise related to the subject-matter of the editorial and cartoon; to-wit, judicial acts, and also because the report was made many days after the publication of the editorials.

4. The affidavit of John D. Pennekamp can be of no avail [fol. 215] since it in nowise excuses the unfair and untrue charges and imputations of the editorials and cartoon.

5. The affidavit of Jeane Bellamy Bills (The Herald's employee) is of no avail since it is only a newspaper reporter's views of the law and likewise her view of some of the facts revealed by the Court's records. The records themselves will control.

The respondents' answer in effect submits that their publications directed at specific judicial actions were prompted by the faults of the law and by the alleged failure or neglect of the law enforcement officers—the prosecuting and arresting officers—a libel of the Court for the faults of others.

Comment

A false statement without the support of some truth may be met and dealt with but a half truth even gives credence to the false. A newspaper, like an individual, does not have the right to falsify.*

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* Mr. Elisha Hanson, of counsel for The Herald, at the termination of his argument upon the return to the citation, and in answer to hypothetical questions from the bench, stated as follows:

"Mr. Hanson: * * * under this doctrine a newspaper can go to the extreme of saying what it wants

The public depend upon newspapers for information and the public has a right to assume that a newspaper will fairly report the proceedings of the courts—the people's own institutions. Correct information will remedy evils but misinformation and regimented news may likely destroy the good.

The People's Reliance on Newspapers

The public has come to depend upon reputable newspapers for information and a false report by a reputable news- [fol. 217] paper is accepted as true and the people are deceived. The Miami Herald is considered a reputable newspaper. It has a large circulation of over 125,000 daily on week days. With increased circulation comes greater responsibilities.

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to say about judicial proceedings, and I regret to say that when it is given that right, it is also given the right of being unfair if it wants to be, but I don't know of any newspaper that wants to be unfair.

[fol. 216] Judge Barns: You say it has the right to lie about it?

Mr. Hanson: Yes, and if it lies about the Court the individual judge who is lied about has the right of suing for libel.

* * * * * * *

Judge Barns: Do you confent that the freedom of the press carries with it the right to lie?

Mr. Hanson: The Courts have so held, and they could hold no other thing if you can have the freedom of speech and freedom of press; it does carry the right to lie, and then the Courts have said the one who is lied about has his remedy in some form of subsequent punishment rather than through some from of restraint.

* * * * * * *

Judge Barns: But speaking of the Court as an institution, you have a right to lie about it without there beng any punishment, wouldn't you, under that?

Mr. Hanson: Just the same as you have the right to tell the truth about it without any punishment, if the truth hurt."

The people have a right to not be misinformed and deceived concerning their courts. Courts are for the people and they, the people, are entitled to a fair report concerning court actions. To report on court proceedings is a voluntary undertaking but when undertaken the publisher who fails to fairly report does so at his own peril.

Punishment

Is it exacting too much of the press to require of it that, when it seeks to impugn judicial acts that it not make untrue and unfair reports as a basis for its attack? We think not.

This is a case wherein the appropriate punishment is difficult. We feel that the penalties hereinafter imposed are fairly nominal considering the facts.

We find the facts recited and the charges made in the citation to be true and well founded; wherefore,

It Is Ordered and Adjudged that:

1. John D. Pennekamp and The Miami Herald Publishing Co., and each of them, are and stand guilty of contempt of the Circuit Court of the Eleventh Judicial Circuit of Florida for making an unfair and untrue report of court proceedings and in turn of making false imputations against the Court and its Judges as such based upon respondents' own [fol. 218] unfair and untrue report as appears more fully from the citation and the Court's records;

2. That John D. Pennekamp be and he is hereby fined the sum of $250.00;

3. That The Miami Herald Publishing Co. be and it is hereby fined the sum of $1000.00;

4. That upon the payment of same said sum shall be paid into the Fine and Forfeiture Fund of Dade County, and in default of payment that an execution or executions issue after the time limitation set forth in the next paragraph;

5. That no execution shall issue herein for thirty days or so long as any petition for review shall be pending and not finally disposed of.

Done and Ordered this December 18th, 1944.

Paul D. Barns, Marshall C. Wiseheart, Circuit Judges.

[fol. 219] IN THE CIRCUIT COURT IN AND FOR THE COUNTY OF DADE

NOTICE OF APPEAL FROM JUDGMENT OF GUILT IN CONTEMPT—January 8, 1945

The defendants, John D. Pennekamp and The Miami Herald Publishing Co., a corporation, take and enter their appeal to the Supreme Court of Florida to review the order and judgment of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, bearing date the 18th day of December, A. D. 1944, entered in the above styled cause and recorded in the records of said Court, in Min. Book 144 page 33, and all parties to said cause are called upon to take notice of the entry of this appeal.

Milam, McIlwaine & Milam, by E. T. McIlvaine, Edward E. Fleming, Attorneys for John D. Pennekamp and The Miami Herald Publishing Co.

The undersigned State Attorney for Dade County, Florida, hereby acknowledges receipt of a copy of the foregoing notice of appeal. This 8 day of January, A. D. 1945.

Stanley Milledge, State Attorney for Dade County, Florida; James M. Carson, F. M. Hudson and M. L. Mershon, by M. L. Mershon, Amicus Curiae.

[fol. 220] IN THE CIRCUIT COURT IN AND FOR THE COUNTY OF DADE

GROUNDS OF APPEAL AND ASSIGNMENT OF ERRORS—Filed January 8, 1945

Comes now the defendants and appellants, John D. Pennekamp and The Miami Herald Publishing Co., and for grounds of the appeal taken in the above entitled cause and for assignments of error, state as follows:

1. The rulings, decisions and orders of the trial court from which the appeal is taken are:

(a) The order of said court dated December 9, 1944, denying the motion to quash the rule in contempt; and

(b) The paper writing signed by said Judges, without date, entitled "Findings of Fact", filed in said Court on December 15, 1944; and

(c) The judgment of guilt in contempt, dated December 18, 1944.

And for assignment of the error relied upon by these defendants for a reversal of the aforementioned rulings, decisions and orders, these appellants assign the following:

A. As to the Order of December 9, 1944, denying the motion to quash the rule:

1. Failing to hold that the citation must allege and show a clear and present danger to obstruct and interfere with the administration of justice.

2. Holding that all allegations in the citation of a mere tendency to obstruct and interfere with the judges in fairly and impartially administering justice was sufficient to charge the crime of contempt.

3. Hold that the matters forming the basis of said [fol. 221] newspaper comment were still pending, whereas it appears that all comment was in reference to matters not then "being presented, heard or decided."

4. Holding that the common law test of freedom of the press in contempt cases will be applied in Florida.

5. Holding that the matters complained of were contemptuous.

B. As to the Findings of Fact:

6. Error in finding that the cartoon referred to the rape cases and that the figure "public interest" represented Asst. State Attorney Henry M. Jones.

7. Error in failing to give effect to respondents' disavowal in the return that the cartoon referred to the rape cases or was intended to illustrate the same.

8. Error in holding that failure to report the approval of Assistant State Attorney Jones of quashal of indictments, constituted a willful and grossly inaccurate statement of court action or that the same constituted contempt.

9. Error in holding that respondents failed to report the reindictment, re-arraignment and re-setting of the rape cases, in the absence of affidavits or evidence to establish such failure; or that such failure constituted a

grossly inaccurate statement of court action or constituted contempt.

C. As to the judgment of guilt in contempt:

10. Error in adjudging respondents guilty of contempt for making an unfair and untrue report and false [fol. 222] imputations against the court.

11. Error in assessing an excessive fine of $1000.00 against the Miami Herald Publishing Co.

12. Error in holding the editorials and cartoon to be unambiguous and that said publications were plainly impugning in nature.

13. Failure to give effect to the return of respondents as to the intent of said publications and factually assuming matters of impugning nature contrary to the said return and the unfair meaning of said publications.

Milam, McIlvaine & Milam, by E. T. McIlvaine, Edw. E. Fleming (Edward E. Fleming), Attorneys for John D. Pennekamp and The Miami Herald Publishing Co.

[fol. 223] IN THE CIRCUIT COURT IN AND FOR THE COUNTY OF DADE

DIRECTIONS TO THE CLERK FOR MAKING UP TRANSCRIPT ON APPEAL—Filed January 8, 1945

The Clerk of said Court is hereby directed to prepare a transcript of record on appeal in the above entitled cause in accordance with the rules of the Supreme Court of Florida.

You will make the following copies and recitals in said record:

1. Copy the citation for contempt.

2. Copy the return of the respondents filed November 28, 1944.

3. Copy the excerpt Transcript of Proceedings filed December 6, 1944, and Exhibits A and B filed at the trial of said cause.

4. Copy the order allowing attorneys to appear amici curiae filed December 8, 1944.

5. Copy the order dated December 9, 1944 denying the motion to quash citation.

6. Copy the findings of fact filed December 15, 1944.

7. Copy the judgment of guilt in contempt dated December 18, 1944.

8. Copy the notice of appeal from judgment of guilt in contempt, together with receipt of service.

9. Copy the grounds of appeal and assignments of error, [fol. 224] together with receipt of service.

10. Copy these directions to the Clerk for making up the transcript.

11. Attach a certificate to the transcript in accordance with the Supreme Court Rules.

12. Stipulation dated January 8, 1945.

Milam, McIlvaine & Milam, by E. T. McIlvaine, Edw. E. Fleming (Edward E. Fleming), Attorneys for Appellants.

Copy of the foregoing Directions to the Clerk received by me this 8th day of January, A. D. 1945.

Stanley Milledge, State Attorney for Dade County, Florida; James M. Carson, F. M. Hudson and M. L. Mershon, by M. L. Mershon, Amicus Curiae.

[fol. 225] IN THE CIRCUIT COURT IN AND FOR THE COUNTY OF DADE

STIPULATION AS TO RECORD—Filed January 8, 1945

It Is Hereby Stipulated by and between Stanley Milledge, State Attorney for the Eleventh Judicial Circuit in and for Dade County, Florida, and James M. Carson, F. M. Hudson and M. L. Mershon, Amicus Curiae, and Milam, McIlvaine & Milam and Edward E. Fleming, attorneys for the respondents, that the colloquy between Judge Barns and counsel for the respondents had at the time of the trial on November 28, 1944, the transcribed notes of which were filed herein on December 6, 1944, be made a part of and incorporated in the record herein.

Dated at Miami, Florida, this 8th day of January, 1945.

Stanley Milledge, State Attorney; James M. Carson, F. M. Hudson and M. L. Mershon, Amicus Curiae, by M. L. Mershon. Milam, McIlvaine & Milam and Edward E. Fleming, by Edw. E. Fleming, Attorneys for Respondents.

I do not assert a position that the State of Florida is a party to the above proceedings but I sign the stipulation merely to satisfy any technical requirement concerning the record, if such exists 1/8/45.

Stanley Milledge, State Attorney, 11th Circuit.

[fol. 226] [Caption omitted]

We hereby acknowledge receipt this 8th day of January, 1945, of a copy of the Grounds of Appeal and Assignments of Errors.

Stanley Milledge, State Attorney for Dade County, Florida. James M. Carson, F. M. Hudson and M. L. Mershon, by M. L. Mershon, Amicus Curiae.

[fols. 227-228] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 229] IN THE SUPREME COURT OF FLORIDA

In Re: JOHN D. PENNEKAMP and THE MIAMI HERALD PUBLISHING COMPANY, Petitioners

MOTION TO DISMISS APPEAL FROM JUDGMENT OF GUILT OF CONTEMPT—Filed January 31, 1945

Comes now J. Tom Watson, Attorney General of the State of Florida, and moves the court to dismiss the appeal heretofore taken in the above entitled cause, and for grounds of such motion, sets forth and shows as follows:

1. An appeal does not lie from an order of a court of general jurisdiction imposing punishment for contempt of court.

J. Tom Watson, Attorney General; George M. Powell, Assistant Attorney General.

[fols. 230-231] STATE OF FLORIDA,
County of Leon:

George M. Powell, being first duly sworn, deposes and says that he is one of the attorneys for the State of Florida

in the above entitled cause and that on Wednesday, the 31st day of January, A. D. 1945, he caused to be sent by mail to Messrs. Milam, McIlvaine & Milam, whose address is Greenleaf Building, Jacksonville, Florida, a copy of the foregoing motion to dismiss the appeal in the above entitled cause. That the same was duly contained in an envelope securely sealed and addressed to the said Messrs. Milam, McIlvaine & Milam at said address in the Greenleaf Building in the city of Jacksonville, Florida, and that upon the envelope in which the same was enclosed, there were uncancelled postage stamps sufficient to carry the same to its destination.

George M. Powell.

Sworn to and subcribed before me this the 31st day of January, A. D. 1945. Evelyn Davis, Notary Publice, State of Florida at Large. My commission expires Mar. 8, 1947. (Seal.)

[fol. 232] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

OPINION DENYING MOTION TO DISMISS APPEAL—February 27, 1945

An Appeal from the Circuit Court for Dade County, Paul D. Barns, and Marshall C. Wiseheart, Judges.

Milam, McIlvaine & Milam, Edward E. Fleming and Elisha Hanson (Washington, D. C.) for Appellants.

J. Tom Watson, Attorney General and George M. Powell, Assistant Attorney General, for Appellee.

ADAMS, J.:

John D. Pennekamp and The Miami Herald Publishing Company were found in contempt of court by Judges Paul D. Barns and Marshall C. Wiseheart in that they had published cartoons and editorials derogatory to the court. The [fols. 233-235] sentence was that Pennekamp pay a fine of $250.00 and The Miami Herald Publishing Company pay a fine of $1000.00. Said sums to be paid into the Dade County Fine and Forfeiture Fund and in default of payment an execution issue for same.

Doubt as to the proper method to review the judgment prompted them to enter an appeal and at the same time to apply for a writ of certiorari. Several motions are now before us. One by the state to dismiss the appeal. Another by the appellants to consolidate the appeal and petition for certiorari and another to defer ruling on the motion to dismiss until final hearing.

The primary question is which is the proper method to review the judgment and should we decide the question now or wait until final hearing? We see no reason to delay deciding the question but on the contrary think it should be settled first.

We are without precedent in Florida on this question, inasmuch as we have reviewed no judgment in contempt like this. The rule is, that ordinarily certiorari will not lie where there is another adequate remedy. Kilgore vs. Bird, 149 Fla. 570, 6 So. 2d 541.

Heretofore we have reviewed judgments in contempt by habeas corpus. Such remedy is not applicable to this case inasmuch as the judgment does not detain the appellants. Contempt proceedings are criminal in nature. Rule 37 of this Court provides that appeals shall be taken in criminal cases in conformity to Section 290, Florida Criminal Procedure Act.

We hold that appeal is the proper method to review the judgment. The motion to dismiss the appeal is denied.

So ordered.

Chapman, C. J. Terrell and Buford, J. J. Concur.

[fol. 236] IN THE SUPREME COURT OF FLORIDA

JOHN D. PENNEKAMP and THE MIAMI HERALD PUBLISHING COMPANY, Appellants,

vs.

THE STATE OF FLORIDA, Appellee

OPINION—Filed July 24, 1945

An Appeal from the Circuit Court for Dade County, Paul D. Barns and Marshall C. Wiseheart, Judge.

Milam, McIlvaine & Milam, Edward E. Fleming and Elisha Hanson (Washington, D. C.) for Appellants.

J. Tom Watson, Attorney General and George M. Powell, Assistant Attorney General, for Appellee.

F. M. Hudson, James M. Carson, M. L. Mershon and Giles J. Patterson, as Amicus Curiae.

TERRELL, J.:

On November 2, 1944, the Circuit Court of Dade County issued a citation to John D. Pennekamp and the Miami Herald Publishing Company, appellants, commanding them to show cause on a day certain why they should not be adjudged in contempt. The basis for the citation was two editorials and a cartoon published in the Miami Herald. The first editorial and the cartoon were published November 2, 1944, and were as follows:

"Courts Are Established—

For the People

The Courts belong to the people. The people have [fol. 237] established them to promote justice, insure obedience to the law and to Punish Those Who Wilfully violate it.

The people maintain the courts by providing the salaries of officials and setting up costly chambers and courtrooms for the orderly and dignified procedure of the tribunals.

"Upon the judges the people must depend for the decisions and the judicial conduct that will insure society—as a whole and in its individuals—against those who would undermine or destroy the peace, the morality and the orderly living of the community.

In order that the courts should not be amenable to political or other pressures in their determination of matters placed before them, Florida Circuit Judges are called upon to face the electorate less often than are other elective office holders.

So long are their terms, in fact, that in Dade County no circuit judge, and only one judge of another court, has come to the bench by public choice in the first instance. All the others have been named by a governor to fill a vacancy caused by death or resignation, or similar circumstance.

Judicial terms in Dade County run:

1. Six years each for six Circuit Judges
2. Four years each for two Civil Court of Record Judges
3. Four years for the judge of the Criminal Court of Record.
4. Four years for the judge of the Court of Crimes
5. Four years for County Judge
6. Four years for Juvenile court judge.

These twelve judges represent the majesty and the sanctity of the law. They are the first line of defense [fol. 238] locally of organized society against vice, corruption and crime, and the sinister machinations of the underworld.

It is beyond question that American courts are of, by and for the people.

Every accused person has a right to his day in court. But when judicial instance and interpretative procedure recognize and accept, even go out to find, every possible technicality of the law to protect the defendant, to block, thwart, hinder, embar-ass and nullify prosecution, then the peoples' rights are jeopardized and the basic reason for courts stultified.

The seeming ease and pat facility with which the criminally charged have been given technical safeguard have set people to wondering whether their courts are being subverted into refuges for lawbreakers.

This week the people, through their grand jury, brought into court eight indictments for rape. Judge Paul D. Barns agreed with the defense that the indictments were not properly drawn. Back they went to the grand jury for re-presentation to the court.

Only in the gravest emergency does a judge take over a case from another court of equal jurisdiction. A padlock action against the Brook Club was initiated last spring before Judge George E. Holt, who granted a temporary injunction.

"After five months, the case appeared Tuesday out of the blue sky before Judge Marshall C. Wiseheart at the time State Attorney Stanley Milledge was engaged with the grand jury.

Speedy decision was asked by defense counsel despite months of stalling. The State Attorney had to choose

between the grand jury and Judge Wiseheart's court. [fol. 239] The judge dismissed the injunction against the club and its Operators. The defense got delay when it wanted a prompt decision from the court when it profited it.

On October 10 Judge Holt had before him a suit by the state to abate a nuisance (bookmaking) at the Tepee Club.

Five affidavits of persons who allegedly visited the premises for the purpose of placing bets were introduced by the state over the objection of the defendants.

Judge Holt ruled them out, explaining in denying the injunction against the Tepee Club.

The defendant cannot cross-examine an affidavit.

The Court cannot determine who is testifying and whether belief can be placed upon such testimony * * * The fact that such affidavits were taken before the State Attorney does not give them any additional weight or value.'

This may be good law, exact judicial evaluation of the statutes. It is, however, the character of legal interpretation which caused people to raise questioning eyebrows and shake confused heads in futile wonderment.

If technicalities are to be the order and the way for the criminallly charged either to avoid justicy altogether or so to delay prosecution as to cripple it, then it behooves our courts and the legal profession to cut away the dead wood and the entanglements.

Make it possible for the state's case, the peoples' case, to be seen with equal clarity of judicial vision as that accorded accused lawbreakers. Otherwise-technicalities and the courts make the law, no matter what the will of the people and of their legislators."

(Here follows 1 photograph, side folio 239a)

But, Judge!

[fol. 240] The second editorial was published November 7, 1944, and is as follows:

"Why People Wonder

Here is an example of why people wonder about the law's delays and obstructing technicalities operating to the disadvantage of the state—which is the people in prosecutions.

After stalling along for months, the defense in the padlock case against the Brook Club appeared before Judge Marshall C. Wiseheart for a decision. The State Attorney was working with the grand jury. The court knocked out the injunction. There was speed, dispatch, immediate attention and action for those charged with violation of the law. So fast that the people didn't get in a peep.

That's one way of gumming up prosecution.

Another is to delay action. * * *"

A motion to quash the citation was denied. Appellants then filed their answer in which they admitted full responsibility for each publication but denied any intention to misrepresent the facts or to charge the individual judges with [fol. 241] wrongdoing. They avow that it was their purpose to correct abuses in the law of Florida and that they were protected in all they said by freedom of the press. The answer was supported by affidavits. On trial of the issue made by the citation and the answer, the court adjudged respondents guilty of contempt. A fine of $250.00 was imposed on Pennekamp and a fine of $1000.00 was imposed on the Miami Herald Publishing Company, the owner and publisher of the Miami Herald. From the judgment so imposed, an appeal and an appeal by certiorari were prosecuted. By opinion filed February 27, 1945, not yet reported, we held that appeal was the proper method to review the judgment.

A number of questions are urged but they all turn on that of whether or not the cartoon and the editorials were of such content as to warrant the judgment for contempt.

The appellants contend that this question must be answered in the negative because (1) the citation does not show a clear and present danger to obstruct or impede the administration of justice, (2) the editorials related to matters concluded which under the common law and the law of

Florida were not contemptuous, (3) the cartoon was ambiguous and was not contemptuous because the sworn return disavows any attempt to so apply it, (4) omission from the editorial of the fact that the state attorney had approved quashal of the indictments and that new indictments were present did not render them contemptuous, and (5) it does not amount to criminal contempt for a newspaper to comment editorially on what it considers erroneous court procedure with the view of eliminating technical defenses and improving the administration of justice.

Appellee contends on the other hand that the law of Florida as propounded in the case of In re Hayes, 72 Fla. 558, 73 So. 362, is controlling, that no question of pleading is involved and that the "clear and present danger cases" relied on by appellants are not pertinent, the reason being that each case is determined in the light of its environment, the test being whether the words used will create the sub- [fol. 242] stantive evil that Congress and the Legislature have the power to prohibit.

With the line of cleavage to drawn, let us examine the law of Florida on which the Hayes case was predicated. Section Thirteen of the Declaration of Rights, Florida Constitution, provides: "Every person may fully speak and write his sentiments on all subjects being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech, or of the press. * * *"

By Act of the territorial council, November 28, 1928, it was provided that contempts may be punished by Florida courts after due notice but that nothing said or written in vacation to or of any judge or of any decision made by him shall be construed as contempt. Section 38.22, Florida Statutes 1941, provides that every court may punish contempts against it, but the punishment imposed by a justice of the peace shall not exceed twenty dollars fine or twenty-four hours imprisonment.

Sections 38.23 and 932.04, Florida Statutes 1941, are also pertinent here and are as follows:

> "Section 3823. A refusal to obey any legal order, mandate, or decree, made or given by any judge either in term time or in vacation relative to any of the business of said court, after due notice thereof, shall be considered a contempt, and punished accordingly.

But nothing said or written, or published, in vacation, to or of any judge, or of any decision made by a judge, shall in any case be construed to be a contempt."

"Section 932.23. Said courts, in the exercise of their criminal jurisdiction, may punish for contempt as in the exercise of their civil jurisdiction, and the criminal courts of record shall possess, in this respect, the same powers as the circuit courts."

[fol. 243] The law thus quoted has been the guide of the courts of Florida in contempt matters for more than one hundred years. This court has from its inception recognized the distinction between contempts committed outside of and those committed within its presence. Ex parte Earman, 85 Fla. 297, 95 So. 755. It has likewise recognized the distinction between civil and criminal contempts and may punish the latter without notice or rule to show cause. S. A. L. Ry. Co. vs. Tampa Southern R. R. Co., 101 Fla. 468, 134 So. 529.

The early contempt cases to reach this court were brought by attachment as in England. State vs. Johnson, 13 Fla. 33. In some of these cases it was held that appeals would not lie. Caro vs. Maxwell, 20 Fla. 17. Later their validity was tested by habeas corpus. Ex parte Senior, Jr., 37 Fla. 1, 19 So. 652. The practice in contempt has never been regulated by statute in Florida as it is by Congress in the Federal Courts. It has been regulated by the State Courts and the regulation has been so satisfactory that the tendency of the Legislature has been to extend rather than limit the power of the courts.

The Court is shown to have followed approved procedure, is not charged with being arbitrary or unfair, and offered to retire from the case if appellants felt that they would prefer to be tried by another judge, so there is no merit to the error assigned on this point. The statutory reasons disqualifying a judge to sit in a cause do not necessarily apply in contempt cases. Punishment for contempt is not for a cause personal to the Court; if the contempt is criminal, as in this case, it is a matter of public concern and is imposed to vindicate orderly procedure. We do not find a piffle of factual basis to disqualify the judge in this case; orderly judicial procedure was the only question at stake.

In the case of In re Hayes, supra, this Court held that

publishers of newspapers have the right but no higher right than others to publish the conduct of the courts, but such right is limited by the obligation to observe respect for [fol. 244] truth and fairness, that freedom of speech and the press contemplates the right of the public to know and discuss all judicial proceedings but this does not include the right to attempt, by wanton defamation and groundless charges of unfairness and partisanship, to degrade the tribunal and impair its efficiency; that prohibition of the abridgement of the press does not secure immunity from punishment to any citizen who falsely and with the purpose to defame, attacks in the newspapers the character of any other citizen, or impugns the integrity, honor, and authority of the courts. The Hayes case is the best reasoned case we have found on the subject and is supported by the current of state and Federal decisions throughout the country. See Dangel on Contempt, page 161, paragraph 355, where contempt is discussed at length and many cases cited. See also Sullivan, Contempt by Publication, page 18, and Rapalje, same subject where the cases are discussed at length and similar conclusion reached.

The Hayes case grew out of an editorial published in a Pensacola paper in which it was charged that in the litigation of a certain cause this court was "partisan", "stubborn", "hostile to counsel" and "ignorant," for which the editor and publisher were attached and adjudged in contempt. The court grounded its judgment squarely on the theory that the people demand a high standard of character, virtue, and intelligence in the judiciary, that there is reposed in them a high and sacred trust, controversies affecting their lives, liberty, and property, and that in the adjudication of such controversies the "exhibition by the justices of ignorance, stubborn-ess, hostility to any party to the cause or his representatives, unfairness, partiality and partisanship would destroy the efficiency and authority of this court, bring it into contempt of the people and prepare the way for breaches of the peace and possible bloodshed among our citizens."

The charge here is that both the editorials and the cartoon were predicated on inaccurate, distorted, incomplete and [fol. 245] biased reports of pending litigation, that the purpose and effect of the editorials and the cartoon were to impute partisanship and favor on the part of the circuit judges to those charged with crime and that such partisan-

ship was so pronounced that they refused to heed the voice of the peoples' representatives.

Let us examine the editorials and the cartoon and assess the basis for this charge. The editorial of November 2 is in five sections; the first and second sections are in the main factual and deductive statements that are not material to the charge. The third section charges that courts sometimes go out to find every possible technicality of the law to protect the defendant, to nullify prosecution, the result being that the peoples' rights are jeopardized and the basic reason for courts stultified. The people then wonder whether their courts are being subverted into refuges for lawbreakers.

The first paragraph of the fourth section then proceeds to illustrate the charge made in the third section by charging that Judge Paul D. Barns at the behest of the defendant peremptorily sent eight indictments for rape back to the grand jury for re-presentation and re-indictment because they were not properly drawn. The facts were that when the first of the eight rape cases was called the court was confronted with a motion to quash the indictment; on consideration of the motion the prosecuting attorney agreed with the court that the indictment was defective because of failure to name the person raped and that the other seven were infected with a similar defect. The grand jury was in session and Judge Barns promptly referred all the indictments back to the grand jury by which they were reconsidered and new indictments were returned within twenty-four hours.

Paragraphs two, three, four, and five of the fourth section of the editorial of November 2 charge that a padlock case was instituted against the Brook Club (a road house of local note) before Judge Holt but through some mysterious means, after five months, it was called up by Judge [fol. 246] Wiseheart at defendant's insistence and peremptorily dismissed; hence the defendant got delay when it wanted it and a prompt dismissal when it desired. The facts are that the Brook Club case was regularly instituted before Judge Holt and proceeded to issue promptly and months after the issues were matured and the case ready for trial, it was set down on motion to dismiss with notice to opposing counsel. Every step in the cause was regular and the motion to dismiss was called up before Judge Wise-

lieart, because Judge Holt was out of the circuit. This court can take judicial knowledge that Judge Hunt had been called into the armed services and that Judge Barns being the senior circuit judge had a very broad discretion under the law in assigning cases to other judges.

The concluding paragraphs of Section four have to do with a suit to abate a nuisance (bookmaking at the Tepee Club) wherein Judge Holt ruled incompetent as evidence five affidavits. No other evidence was offered by the prosecution; temporary injunction was denied. The editorial then goes on to interpolate other derogatory matter and concludes by suggesting that such interpretations make the people raise questioning eyebrows and give the State's case an unequal chance with that of an accused lawbreaker.

The editorial of November 7 emphasizes that of November 2 by restating some of the groundless charges against the judges and then pyramiding deception on deception by insinuating that Judge Wiseheart disposed of the Brook Club case at the will and behest of the defendant while the prosecution was engaged with the grand jury. Consequently the people "did not get in a peep". So the vice in both the editorials was the distorted, inaccurate statement of facts and with that statement were scrambled false insinuations that amounted to unwarranted charges of partisanship and unfairness on the part of the judges.

The record was available in all these cases and it does not reveal a breath of suspicion on which to predicate partisanship and unfairness on the part of the judges. It is shown [fol. 247] rather that they acted in good faith and handled each case to the very best advantage possible. There was no judgment that could have been entered in any of them except the one that was entered. If the editorials had stated the facts correctly, nothing but a correct conclusion could have been deduced and there would have been no basis for contempt but here they elected to publish as truth a mixture of factual misstatement and omission and impose on that false insinuation, distortion, and deception and then contend that freedom of the press immunizes them from punishment.

The cartoon is, if possible, a worse perversion than the editorial. By pictograph, it emphasizes the welter of false imputation in the editorials and perverts the symbol of law and justice. Since Chief Justice Coke said to King James I, "The King is under God and the law", the judge has been

the symbol of law and justice as familiar to the people of this country as the symbol of Uncle Sam. Speak the word "Judge" and there arises the visage of Marshall, Miller, Holmes, Brandeis, Taylor, or Whitfield, the very symbol of Justice and wisdom. It is quite true that in rare instances, those who donned the silk fell below type, but we have become so accustomed to associate these virtues with the "Judge" that they have become a part of our common heritage.

The symbol of the judge in the cartoon does not reflect one attribute of this well known judicial concept. He wears the bloated "beer blossom" face of the gay nineties and looks as though he had spent the night before on a jag. The symbol of the defendant fawning over the judge may typify the wishful thinking of the organized criminal gang, but to one indoctrinated with respect for law and order it has more the likeness of the overlord of Plutos kingdom. At any rate, a defendant seated on the dais by the side of and fawning over the judge is a gross slander of our method of administering justice and warrants severe censure. The symbol of a manikin representing the public imploring the court is likewise irrational and a prostitution of anything known to court room procedure.

The cartoon and the editorials assimilated, the deduction [fol. 248] is inescapable that the circuit judges of Dade County are grabbing at technicalities to free criminals, that the voice of the people is thrown to the discard, that trials are juggled at the behest of the criminal, that the courts are in league with the underworld and will sanction any species of sham plea to give it the breaks. We can think of no better build-up on which the cerebral plummet could fathom a state of partisanship and unfairness more libelous to the court. Appellants contend that no such interpretation was intended but the answer to this contention is that a "man reveals his mind by the symbols he adopts" and we find no reason to conclude that appellants did not adopt their symbols deliberately. The Miami Herald is one of the leading newspapers in the southeast. It has a daily circulation of 125,000 and Dade County has a population of more than 300,000. The Circuit Court of Dade County disposes of more than 7000 cases per year. The Miami Herald was engaged in what was known locally as an anti-vice crusade and had singled out the circuit judges as aiders and abbetters in the object of its wrath. In the light of this factual

recitation, it is utter folly to suggest that the object of these publications was other than to abase and destroy the efficiency of the court.

We have read Toledo Newspaper Company vs. United States, 247 U. S. 402, 38 Sup. Ct. 560, 62 L. Ed. 1186; Nye vs. United States, 313 U. S. 33, 61 Sup. Ct. 810, 85 L. Ed. 1172; Near vs. Minnesota, ex rel. Olson, 283 U. S. 697, 51 Sup. Ct. 625, 75 L. Ed. 1357; Patterson vs. Colorado, 205 U. S. 454, 27 Sup. Ct. 556, 51 L. Ed. 879, but we do not think any of them collide with the views expressed in this case. We also agree that publications about a case that is closed, no matter how scandalous, are not punishable as contempt. This is the general rule but the Florida Statute is more liberal than the rule.

What has been said brings this case easily within the rule announced in the Hayes case, supra, on authority of which the judgment might with propriety be affirmed but appellants insist that they are immunized from the judgment imposed on them by their right of freedom of the press. [fol. 249] They rely on Bridges vs. California, 314 U. S. 252, 62 Sup. Ct. 190, 86 L. Ed. 192, to support this contention. It is also contended that the Bridges case prescribed a rule of decision by which all state and federal courts must be governed in imposing judgments for contempt by publication.

The Bridges case has undoubtedly created a variety of opinion as to what the law of contempt is and as to what circumstances warrant its punishment by state courts, but we do not follow appellants in their interpretation of it. The provision of the Florida Constitution under which this Court proceeded in the Hayes case was not materially different from that in many other state constitutions. The provision in the First Amendment to the Federal Constitution protecting freedom of the press was a prohibition imposed on Congress and had nothing to do with the States. The Fourteenth Amendment adopted in 1868 dealt with a subject matter entirely foreign to freedom of the press, but in Gitlow vs. New York, 268 U. S. 625, 45 Sup. Ct. 625, 69 L. Ed. 1138, decided in 1925, the court said that the Fourteenth Amendment extended the immunity in the First Amendment to the States. So it was not until 1925 that anyone dreamed that the Federal Constitution had anything to do with the punishment for contempt under state law. In fact, Federal holdings supported this belief. Prudential

Insurance Co. vs. Cheek, 259 U. S. 530, 42 Sup. Ct. 516, 66 L. Ed. 1044. The States had been exercising the power to punish for contempt for more than a hundred years and we find nothing in the Bridges case indicating a purpose to supersede state law and decisions on the question or to require state courts to conform to Federal pattern.

The majority opinion in the Bridges case appears to have been predicated on the doctrine of the concurring opinion of Mr. Justice Brandeis in Whitney vs. California, 274 U. S. 357, 47 Sup. Ct. 651, 71 L. Ed. 1095. The Court was then concerned with free speech and assembly rather than freedom of the press and the gist of the holding was that in order to support a finding of "clear and present danger", [fol. 250] it must be shown either that immediate serious violence was to be expected or was advocated or that past conduct furnished reason to believe that such advocacy was then contemplated.

The "clear and present danger cases" had their inception in Schenck vs. U. S., 249 U. S. 47, 39 Sup. Ct. 247, 63 L. Ed. 470, wherein Mr. Justice Holmes couched the doctrine in these words, "the question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that 'The State' has a right to prevent". In the Bridges case, the Court says that the "substantive evil likely to result must be extremely serious and the degree of imminence extremely high before utterances can be punished" and that free press "must be given the broadest scope that can be countenanced in an orderly society".

So given its broadest scope, we cannot say that the Bridges case did more than decide the law of that case. We think the rule still persists that each case must stand or fall by the facts presented. All the cases and text books uphold this doctrine. In the Bridges case, the Court in terms recognized that California had no law punishing "publication made outside the court room" as contemptuous, while in the case at bar, as previously pointed out, every step was taken under the statute, recognized for more than one hundred years. There being no law in California regulating the subject matter, the Supreme Court was relegated to the facts presented on which it determined the case and held that they would not support the judgment.

Prior to the adoption of the Fourteenth Amendment, there was no theory upon which Federal courts could interfere with the states in defining and punishing abuses of freedom of the press. The only condition imposed on the state's power by the Fourteenth Amendment is the observance of due process; in other words, the judgment of the statute assaulted must not be arbitrary, unreasonable, or discriminatory. It necessarily follows that the only question that can properly be raised here goes to the reasonable-[fol. 251] ness, arbitrariness, or the discriminatory character of the contempt judgment or the Florida law under which it was imposed. This question appellants have by-passed and have elected to stand on their immunity from punishment under the Fourteenth Amendment.

If appellant's theory that the judgment appealed from abridges their liberty of the press as guaranteed by the First and Fourteenth Amendments to the Federal Constitution is pursued to its ultimate conclusion, it necessarily follows that the power of the States in the premises is abrogated. We do not think the Bridges case is susceptible to that interpretation. We think that the reservations to the states in the Tenth Amendment are still vital, that State Courts still have the power when properly authorized to punish for contempt, and if not unreasonably or arbitrarily exercised, their judgments will be upheld. We have examined the editorials and the telegram involved in the Bridges case and we find nothing in them assaulting the integrity of the court. They would not have been contemptuous under the rule in the Hayes case.

We have examined the case of People of the Virgin Islands vs. Canute Brodhurst, Sr., U. S. Circuit Court of Appeals, Third Circuit, decided March 21, 1945, which is also relied on by appellants but we do not think it rules this case. It was disposed of on the theory that the provisions of the St. Croix Code relied on were repealed by what was known locally as the organic act and being so the Court was without authority to impose the judgment for contempt.

We think the cases generally hold that while the abridgment of freedom of the press is the exception, and that while it cannot be done on grounds as tenuous as those which authorize the regulation of a public utility or a corporation for profit, it may be done to "prevent grave and immediate danger to interests which the State may lawfully protect." West Virginia State Board of Education vs. Barnett, 319

U. S. 624, 63 Sup. Ct. 1178, 87 L. Ed. 628; Herndon vs. [fol. 252] Lowry, 301 U. S. 242, 57 Sup. Ct. 732, 81 L. Ed. 1066; Thornhill vs. State of Alabama, 310 U. S. 88, 60 Sup. Ct. 736, 84 L. Ed. 1093. Certainly the courts are interests which the state may lawfully protect. It is not to be inferred that courts are in any sense immunized from criticism. A newspaper may criticize, harass, irritate, or vents its spleen against a person who holds the office of a judge in the same manner that it does a member of the Legislature and other elective officers, but it may not publish scurrilous or libelous criticisms of a presiding judge as such, or of his judgments for the purpose of discrediting the court in the eyes of the public. Respect for courts is not inspired by shielding them from criticism. This is a responsibility of the judge, acquired over the years by the spirit in which he approaches the judicial process, his ability to humanize the law and square it with reason, the level of his thinking, the consistency of his adherence to right and justice, and the degree to which he holds himself aloof from blocs, groups, and techniques that would sacrifice justice for expediency.

Freedom of the press is not a symbol of the "big stick" that one may flourish with impunity. It is one of the vital elements of democracy in which the public as well as the proprietor has a vital interest. In all the categories of our economic structure, the newspaper business is the only business earmarked in the Constitution. It is not out of place to ask why the newspaper business should enjoy a solicitude not accorded the grocery business, the dry goods business, the restaurant business, the drug business, and scores of other businesses by which men and women shoo the wolf from the door. The newspaper business is subject to the ordinary forms of taxation but it may successfully resist undue taxes and regulations. Other businesses do not enjoy the latter protection. Grosjean et al. vs. American Press Co., 297 U. S. 233, 56 Sup. Ct. 444, 80 L. Ed. 660.

The answer to this question is not far to seek. Our forefathers were committed to the doctrine that democratic processes could not survive, absent a public opinion energized by truth, liberty, equality, and justice. Hence the [fol. 253] reason for a free and unframmeled press as a medium to generate such a type of public opinion. It therefore follows that while the Bill of Rights endowed the press with liberty, it also imposed on it a trusteeship that it may

not abandon or prostitute in the exercise of its freedom.

The propagation of falsehood and deception in the manner shown in this case amounts to a deliberate abandonment of its trusteeship on the part of the press. It would be equally so to permit itself to become the tool of any set or clique for that purpose. Courts cannot function in a free country when the atmosphere is charged with the effusions of a press designed to poison the mind of the public against the presiding judges rather than to clarify the issues and propagate the truth about them. The latter was the press that Mr. Jefferson visioned when he promulgated the thesis, "Our liberty depends on the freedom of the press and that cannot be limited without being lost."

Judge Cooley characterized a free press as any discussion of public matters essential to prepare the people for an intelligent exercise of their rights and duties as citizens. So when we speak of a free press, we think of gathering and disseminating news, the editorial page, or any discussion to promote truth and understanding. Unless it bears some relation to the promotion of truth and understanding, free press may not include the comics, sports, commercial advertisements, and other features that have become part of the modern newspaper. A free press never was contemplated to be a subsidized press open solely to the stockholders or others for a price. In fact, a press with one eye on dividends and the other on hedges to truth and understanding is not a free press as contemplated by the Constitution. The hallmark of a free press is voluntary devotion to the common good; when other motives are dominant, it usually ceases to be free and forfeits public confidence.

It would be trite to contend that important constitutional guaranties are burdened with commensurate duties and responsibilities. It would be just as trite to contend that a free press is one of the essentials of representative democracy and that it pays its debt to the bill of rights [fol. 254] in proportion to the effort it puts to enlighten public opinion and square it with democratic processes. It may also be confidently asserted that a free press is no freer than a free man, the one being as securely bound by approved canons of decency and propriety as the other. Neither is free to do as it will in total disregard of the right of others. The courts have ample power to relieve against encroachments on liberty of the press and to see that all, not merely the elect, have a right to publish their views.

It is commendable in a newspaper to condemn public wrongs and outmoded systems of procedure, to expose vice and corruption or the conduct of public officials who veer from the course charted for them by the law. Bearing these common sense principles in mind, there is no limit to the content or the diversity of information that the press may exhibit to the public. The fact that it derives from antagonistic sources is all the better, since that enables the public mind to evaluate and arrive at a better balanced judgment. Freedom to publish one's views is a principle of universal practice, but when the press deliberately abandons the proprieties and sets out to poison its pabulum or to sow dragons' teeth and dispense canards for the purpose of doing another a wrong, it is in no different category from a free man that does likewise. The most rigid safeguard thrown around a free press would not protect appellants from falsely publishing or announcing to the world that the clergy of Miami were in sympathy with the practice of polygamy or were fostering other doctrines equally obnoxious to approved moral standards.

There is another constitutional guaranty equally as binding as freedom of the press. We have reference to fair and impartial trial guaranteed by Article Six, Federal Constitution, and Section Eleven, Declaration of Rights, Florida Constitution. Freedom of the press cannot be exploited in a manner to destroy fair and impartial trial. There is of course an area in which a pending trial may be discussed as "news" and information concerning it given to the public, but when press reports of a trial are turned into [fol. 255] assaults on the character or integrity of the presiding judge, the jury, or the witnesses, they degenerate into trial by newspaper (often called contempt by publication) and merit condemnation. Bee Publishing Company vs. State, 107 Neb. 74, 185 N. W. 339. Under the English practice, trial by newspaper is punished speedily but wanton criticism of the court is rarely taken account of. The result is that trial by newspaper is practically obsolete in England while in this country, it has in some instances become one of the most vicious impediments to fair and impartial trial.

The theory of our system of fair trial is that the determination of every case should be induced solely by evidence and argument in open court and the law applicable thereto and not by any outside influence, whether of private talk

or public print. Patterson vs. Colorado, 205 U. S. 454, 27 Sup. Ct. 556, 51 L. Ed. 879. In Sullivan on Contempt by Publication, page 180, it is pointed out that trial by newspaper in its subtlety, insidiousness, and positive damage, exceeds all injuries to the judicial processes. To assert that the administration of justice is not thwarted and that a "judge of ordinary fortitude" is not disturbed or perhaps thrown off the beam by assaults of the character shown here, assumes a trend in the mass mind that common experience knows nothing about. Partisan assaults on judges, juries, or witnesses are not within the compass of a free press so long as the case is pending.

We have searched the text books and the cases diligently and we find nothing to support the contention of one of counsel for appellants that freedom of the press protects him if he chooses to lie about the Court and that the Court can do nothing about it unless he lies in the courtroom or his lying is "manifested with such a high degree of imminence as to express a high degree of threat." How imminent the "threat" must be under such a test we do not know and do not labor the point because we are convinced that it is beside the question. The main purpose of contempt under state law is to afford the court a means to enforce decorum [fol. 256] and punish willful disregard of orderly judicial administration. The State Courts touch the public much more frequently than the Federal Courts and they have many reasons to enforce orderly administration that would not arise in the Federal Courts. If that power is to be construed by what appellants contend to be the pattern in the Bridges and Nye cases, then more than one hundred years of state law and decisions on the subject are turned into confusion or set at naught. See Dangel on Contempt, page 161, et seq., for cases and discussion illustrating the scope of state decision on the subject.

We do not think this can be the law. The Bridges case was disposed of on authority of the "clear and present danger cases," which are not analogous to most of the state cases because they arise from a different state of the law. The ultimate test in the Bridges case requires that the "substantive evil must be extremely serious and the degree of imminence extremely high before the utterances can be punished." Even if this test is to the rule in the State Courts, they are authorized to apply it by their own law and standards and unless the application is shown to be arbi-

trary and unreasonable, their judgment should not be disturbed. The law in Florida permits the most liberal exercise possible of freedom of the press but holds to account those who abuse it.

We therefore hold that the cartoon and the editorials afford ample support for the judgment imposed and that the issues were properly adjudicated under Florida law. We do not think that the rule in the Bridges case is applicable but if for any reason it may be held to be the judgment is still free from error because it is not charged that it was applied in an arbitrary or unreasonable manner and if it were, there is no showing to that effect. We do not think freedom of the press can be exercised in a way to vitiate fair and impartial trial nor do we think that it can be employed to harass the court or in total disregard of approved standards of propriety when the rights of others to the cause are adversely affected.

[fol. 257] Affirmed.

Chapman, C. J., Brown, Thomas, and Adams, J. J., Concur. Buford and Sebring, J. J., Dissent.

Brown, J. Dissenting:

I find myself unable to concur in the conclusion reached by the majority of this Court affirming the judgment of contempt. I agree with much of what is said in the very able opinion prepared by Mr. Justice Terrell and I think it would be very easy to follow that opinion in the main and arrive at an opposite conclusion.

As I read the editorials and view the cartoon constituting the basis of the charge, there is nothing in either which imputes a want of fairness, impartiality or integrity to any Judge or any Court. Nor do they appear to have for their purpose or intent the influencing or controlling the determination of the result in any particular case *thesi pendens* in any court. They appear to adversely criticise a judicial system which, to protect the rights of the righteous must, by the same token, see that the alleged rights of the unrighteous are determined.

We who constitute this Court find ourselves often in the position where we must, to preserve the rights of the innocent, reverse the conviction of one who is shown to be guilty but whose conviction has been had in whole or in part

by illegal means. This follows from the recognition of the wisdom of our judicial system. If there be those who think it a bad system they have the right to express their views and, if possible, to get so many converts to their way of thinking that the system may be changed by organic law.

However, aside from this conclusion, we are faced with two opinions, one of the Supreme Court of the United States and one of the Supreme Court of Louisiana, which I am convinced require the reversal of the judgment in the [fols. 258-259] cases of Bridges vs. California, 314 U. S. 252, 62 Sup. Ct. Rep. 190, 86 L. Ed. 192, and Graham vs. Jones, in Re Times Picayune Publishing Co., 200 La. 137, 7 Sou. (2d) 688. Of course, I recognize that the latter case is only persuasive but I think the Bridges case is binding and that in the absence of showing of *clear* and *present danger* of influencing or controlling the determination in any particular case, then pending in any court, created by the publication complained of; no punishable contempt is made to appear.

Sebring, J. Concurs in conclusion.

SEBRING, J. concurring in conclusion:

I concur in the conclusion reached that the judgment appealed from must be reversed on authority of Bridges vs. California, 314 U. S. 252, 62 S. Ct. Rep. 190, 86 L. Ed. 192.

[fol. 260] IN THE SUPREME COURT OF FLORIDA

[Title omitted]

DIRECTIONS TO THE CLERK OF THE SUPREME COURT FOR PREPARING TRANSCRIPT FOR CERTIORARI IN THE UNITED STATES SUPREME COURT—Filed August 17, 1945

The Clerk of said Court will please immediately proceed with the preparation of certified transcript of the record in the above entitled proceeding in accordance with the rules of the Supreme Court of the United States for application for writ of certiorari to said Court, and include in said transcript the following:

1. The entire transcript of record in appeal, as certified by E. B. Leatherman, Clerk of the Circuit Court of Dade County, Florida, 17th day of January, 1945.

2. The motion to dismiss the appeal and the order denying said motion;

3. The opinion of the Supreme Court of Florida, dated July 24, 1945;

4. Appropriate certificate to said transcript.

Milam, McIlvaine & Milam, by (S.) E. T. McIlvaine, Attorneys for Appellants.

[fol. 261] STATE OF FLORIDA,
County of Duval:

I, E. T. McIlvaine, of Counsel for Appellants, do hereby certify that on this the 6th day of August, A. D. 1945, I have duly mailed a copy of the foregoing Directions to the following counsel for appellee in said case, that is to say:

1. Hon. J. Tom Watson, Attorney General, Tallahassee, Florida

2. F. M. Hudson, Esquire, Seylold Building, Miami, Florida;

3. Giles J. Patterson, Esquire, Florida National Bank Bldg., Jacksonville, Florida.

(S.) E. T. McIlvaine, Of Counsel for Appellants.

Sworn to and subscribed before me, this 6th day of August, A. D. 1945.

Hugh A. Alderman, Notary Public, State of Florida.
My Commission expires 1 19 46. (Seal.)

[fol. 262] [Clerk's Certificate to foregoing transcript omitted in printing.]

[fol. 263] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 5, 1945

The petition herein for a writ of certiorari to the Supreme Court of the State of Florida is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.